

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 *****

5 IN RE: NATIONAL MDL No. 2804
6 PRESCRIPTION OPIATE
7 LITIGATION Case No.
8 1:17-MD-2804

9 *****

10 THIS DOCUMENT RELATES TO Hon. Dan A. Polster
11 ALL CASES

12 *****

13 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
14 CONFIDENTIALITY REVIEW
15 VIDEOTAPED DEPOSITION OF THOMAS S. MOFFATT

16 Tuesday, January 15th, 2019
17 8:04 a.m.

18 Held At:
19 Omni Hotel
20 One West Exchange Street
21 Providence, Rhode Island

22
23 REPORTED BY:
24 Maureen O'Connor Pollard, RMR, CLR, CSR

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| <p>1 APPEARANCES:</p> <p>2</p> <p>3 FOR THE PLAINTIFFS:</p> <p>4 MICHAEL E. ELSNER, ESQ.</p> <p>5 KAITLYN EEKHOFF</p> <p>6 MOTLEY RICE LLC</p> <p>7 28 Bridgeside Boulevard</p> <p>8 Mt. Pleasant, South Carolina 29464</p> <p>9 843-216-9250</p> <p>10 melsner@motleyrice.com</p> <p>11</p> <p>12 -and-</p> <p>13 JAMES A. DeROCHE, ESQ., of Counsel</p> <p>14 WEISMAN, KENNEDY & BERRIS CO., LPA</p> <p>15 101 W. Prospect Avenue</p> <p>16 Cleveland, Ohio 44115</p> <p>17 800-747-9330</p> <p>18 lderoche@garson.com</p> <p>19 FOR McKESSON CORPORATION:</p> <p>20 KEVIN M. KELLY, ESQ.</p> <p>21 COVINGTON & BURLING LLP</p> <p>22 One CityCenter</p> <p>23 850 Tenth Street, NW</p> <p>24 Washington, DC 20001-4956</p> <p>202-662-5518</p> <p>kkelly@cov.com</p> <p>FOR CARDINAL HEALTH, INC.:</p> <p>CHRISTOPHER N. DAWSON, ESQ.</p> <p>WHELAN, CORRENTE, FLANDERS, KINDER</p> <p>& SIKET LLP</p> <p>100 Westminster Street, Suite 710</p> <p>Providence, Rhode Island 02903</p> <p>401-270-4500</p> <p>cdawson@whelancorrente.com</p> | <p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 FOR WEST VIRGINIA BOARD OF PHARMACY:</p> <p>4 HARRISON CYRUS, ESQ. (Remotely)</p> <p>5 BAILEY & WYANT PLLC</p> <p>6 500 Virginia Street East</p> <p>7 Charleston, West Virginia 25301</p> <p>8 304-345-4222</p> <p>9 hcyrus@baileywyant.com</p> <p>10 VIDEOGRAPHER: Robert Sweig</p> <p>11 TRIAL TECH: Gina Veldman</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> |
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| <p>1 APPEARANCES (Continued):</p> <p>2</p> <p>3 FOR AMERISOURCEBERGEN DRUG CORPORATION:</p> <p>4 JAMES A. PETKUN, ESQ. (Remotely)</p> <p>5 REED SMITH LLP</p> <p>6 Three Logan Square</p> <p>7 1717 Arch Street, Suite 3100</p> <p>8 Philadelphia, Pennsylvania 19103</p> <p>9 215-851-8100</p> <p>10 jpetkun@reedsmith.com</p> <p>11</p> <p>12 FOR WALMART:</p> <p>13 JOANNE CACERES, ESQ. (Remotely)</p> <p>14 JONES DAY</p> <p>15 77 West Wacker</p> <p>16 Chicago, Illinois 60601</p> <p>17 312-782-3939</p> <p>18 jcaceres@jonesday.com</p> <p>19</p> <p>20 FOR CVS INDIANA, LLC and CVS RX SERVICES, INC.</p> <p>21 and THE DEPONENT:</p> <p>22 ERIC R. DELINSKY, ESQ.</p> <p>23 ZUCKERMAN SPAEDER LLP</p> <p>24 1800 M Street NW, Suite 1000</p> <p>Washington, DC 20036-5807</p> <p>202-778-1800</p> <p>edelinsky@zuckerman.com</p> <p>FOR ENDO PHARMACEUTICALS INC., ENDO HEALTH</p> <p>SOLUTIONS INC., PAR PHARMACEUTICAL COMPANIES,</p> <p>INC. (f/k/a PAR PHARMACEUTICAL HOLDINGS, INC.)</p> <p>DOUGLAS L. SHIVELY, ESQ. (Remotely)</p> <p>BAKER HOSTETLER</p> <p>127 Public Square</p> <p>Cleveland, Ohio 44114</p> <p>216-861-6486</p> <p>dshively@bakerlaw.com</p> | <p>1 INDEX</p> <p>2 EXAMINATION PAGE</p> <p>3 THOMAS S. MOFFATT</p> <p>4 BY MR. ELSNER 8</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 NO. DESCRIPTION PAGE</p> <p>9 CVS-Moffatt-1 9/27/06 letter fro DEA,</p> <p>10 Bates CVS-MDLT1-000010552</p> <p>11 through 555..... 40</p> <p>12 CVS-Moffatt-2 12/27/07 letter from DEA,</p> <p>13 Bates CVS-MDLT1-000013535</p> <p>14 and 3536..... 53</p> <p>15 CVS-Moffatt-3 9/14/18 letter..... 74</p> <p>16 CVS-Moffatt-4 Document titled CVS Health</p> <p>17 At a Glance..... 77</p> <p>18</p> <p>19 CVS-Moffatt-5 Map, Red Lion Data..... 78</p> <p>20</p> <p>21 CVS-Moffatt-6 Drug Fact Sheet,</p> <p>22 Hydrocodone, Bates</p> <p>23 CVS-MDLT1-000055614 and</p> <p>24 55615..... 93</p> <p>CVS-Moffatt-7 11/25/13 e-mail, Bates</p> <p>CVS-MDLT1-000076135..... 96</p> <p>CVS-Moffatt-8 5/15/14 e-mail, Bates</p> <p>CVS-MDLT1-000022230 and</p> <p>2231..... 101</p> <p>CVS-Moffatt-9 Letter from DEA to CVS</p> <p>Indiana, Bates</p> <p>CVD-MDLT1-000008014 and</p> <p>8015..... 122</p> |

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| <p>1 CVS-Moffatt-22 Settlement Agreement, Bates 2 CVS-MDLT1-000060839 through 3 846..... 242 4 CVS-Moffatt-23 Settlement Agreement, Bates 5 CVS-MDLT1-000060830 through 6 838..... 252 7 CVS-Moffatt-24 Settlement Agreement, Bates 8 CVS-MDLT1-000060872 through 9 906..... 254 10 CVS-Moffatt-25 Stipulated Agreement, Bates 11 CVS-MDLT1-000060907 through 12 914..... 260 13 CVS-Moffatt-26 Chart titled CVS 14 Settlements..... 262 15 CVS-Moffatt-27 CVS Caremark Corporation 16 January 8-9, 2014 Board of 17 Directors Meeting minutes, 18 Bates CVS-MDLT1-000055303 19 through 5352..... 266 20 21 22 23 24</p> | <p>1 A. Good morning. 2 Q. My name is Michael Elsner, I'm from 3 the law firm of Motley Rice, and I represent the 4 plaintiffs in these actions. 5 Can you please state your name? 6 A. Thomas S. Moffatt, M-O-F-F-A-T-T. 7 Q. And what is your date of birth? 8 A. January 26, 1964. 9 Q. And where do you live, sir? 10 A. Kingston, Rhode Island. 11 Q. And you graduated from college with a 12 degree in history, is that right? 13 A. Yes. 14 Q. Did you take any pharmaceutical 15 courses in college? 16 A. No. 17 Q. Did you take any courses that related 18 to pharmacy distribution or regulations of 19 pharmacies? 20 A. No. 21 Q. What about courses in controlled 22 substances or other narcotics? 23 A. No. 24 Q. You then took a few years off and you</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 went to law school, is that right?</p> <p>2 A. I took a few years off, then I went to</p> <p>3 law school.</p> <p>4 Q. What did you do in that intervening</p> <p>5 period?</p> <p>6 A. I worked, principally I worked at</p> <p>7 Brother Industries in Nagoya, Japan as an</p> <p>8 English consultant, and then I came back and</p> <p>9 worked as a paralegal for a year in a personal</p> <p>10 injury firm.</p> <p>11 Q. What was the name of the firm?</p> <p>12 A. Law offices of S. George Bromberg.</p> <p>13 Q. And where was that?</p> <p>14 A. Cambridge, Massachusetts.</p> <p>15 Q. And then you attended Northeastern</p> <p>16 University School of Law, is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Did you graduate from law school?</p> <p>19 A. Yes.</p> <p>20 Q. And did you take the Bar exam when you</p> <p>21 graduated?</p> <p>22 A. Yes.</p> <p>23 Q. Are you a licensed attorney today?</p> <p>24 A. Yes.</p> | <p style="text-align: right;">Page 12</p> <p>1 A. No.</p> <p>2 Q. Was CVS a client of Mintz Levin while</p> <p>3 you were there?</p> <p>4 A. Yes.</p> <p>5 Q. Did you work on that -- for CVS while</p> <p>6 at Mintz Levin?</p> <p>7 A. No.</p> <p>8 Q. What type of work did Mintz Levin do</p> <p>9 for CVS, just generally? I don't need the</p> <p>10 specifics.</p> <p>11 A. Generally real estate matters.</p> <p>12 Q. Is that related to the purchase of</p> <p>13 various pharmacies, or could you be a little bit</p> <p>14 more specific without revealing a privilege?</p> <p>15 A. It was more general real estate</p> <p>16 matters than acquisitions, as far as I recall.</p> <p>17 Q. But you didn't --</p> <p>18 A. I didn't work on any of them, so...</p> <p>19 Q. Okay. And then you came to work for</p> <p>20 CVS, is that right?</p> <p>21 A. Yes.</p> <p>22 Q. And what year was that?</p> <p>23 A. That was August of 1997.</p> <p>24 Q. Okay. What were you hired to do for</p> |
| <p style="text-align: right;">Page 11</p> <p>1 Q. What states are you licensed to</p> <p>2 practice?</p> <p>3 A. I'm licensed in Massachusetts, and</p> <p>4 then I'm registered as an out-of-state in-house</p> <p>5 counsel in Rhode Island.</p> <p>6 Q. In law school did you take any courses</p> <p>7 in pharmaceutical law or regulations of</p> <p>8 pharmacies?</p> <p>9 A. No.</p> <p>10 Q. After law school you went to work for</p> <p>11 Mintz Levin, is that right?</p> <p>12 A. Correct.</p> <p>13 Q. And what was your area of practice</p> <p>14 when you worked there?</p> <p>15 A. I was a corporate attorney.</p> <p>16 Q. Okay. What years were you there?</p> <p>17 A. I was there from 1993, the fall of '93</p> <p>18 through August -- or July of '97.</p> <p>19 Q. What type of work did you do as a</p> <p>20 corporate attorney for Mintz Levin?</p> <p>21 A. A wide variety of corporate matters,</p> <p>22 transactions, securities, general corporate law.</p> <p>23 Q. Did you deal with any DEA regulations</p> <p>24 while working at Mintz Levin?</p> | <p style="text-align: right;">Page 13</p> <p>1 CVS?</p> <p>2 A. I was a corporate lawyer.</p> <p>3 Q. For CVS Health, or what was the name</p> <p>4 of the entity that hired you?</p> <p>5 A. CVS Pharmacy, Inc., a Rhode Island</p> <p>6 corporation.</p> <p>7 Q. And where were you based?</p> <p>8 A. In Woonsocket, Rhode Island.</p> <p>9 Q. Is that where you're based today?</p> <p>10 A. Yes.</p> <p>11 Q. How is it that you came to be hired by</p> <p>12 CVS?</p> <p>13 A. A long story, but essentially it was</p> <p>14 the lead real estate partner at Mintz, Levin</p> <p>15 talking to the general counsel at CVS and the</p> <p>16 general counsel saying, we're looking for a</p> <p>17 corporate guy, do you know anybody, and the real</p> <p>18 estate partner said -- came to me and said, you</p> <p>19 know, don't take this the wrong way but CVS is</p> <p>20 looking for a guy like you, and I said, don't</p> <p>21 take this the wrong way but sign me up, and so I</p> <p>22 went for an interview, and the rest is history.</p> <p>23 Q. Okay. Do you recall what the name of</p> <p>24 your position was when you started at CVS?</p> |

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1 A. Legal counsel.
2 Q. And how long did you serve in that
3 role?
4 A. Probably three years or so.
5 Q. Okay. Could you give me a sort of
6 snapshot of your work history with CVS from 1997
7 until today and the various positions that
8 you've held for CVS Pharmacy?
9 A. That's a pretty long snapshot. So
10 I've always been a corporate lawyer, general
11 corporate law. I do a wide variety of corporate
12 matters for CVS, always have. For many years I
13 was the only corporate lawyer at CVS. And so I
14 was legal counsel first, then senior legal
15 counsel, then assistant general counsel, vice
16 president and assistant general counsel.
17 Q. If I could just interrupt you real
18 quickly?
19 A. Sure.
20 Q. Can you give me some sense of the
21 years when you became senior legal counsel and
22 then vice president and assistant --
23 A. Senior legal counsel was probably
24 around 2000, somewhere in that time frame.

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1 Assistant general counsel would have been around
2 2005 or so. Then I was vice president 2007 or
3 '8, something like that, and for a brief period
4 of time I served as the corporate secretary of
5 the public company. I've been assistant
6 secretary of the public company for several
7 years now. So I've held a variety of titles.
8 My employer has always been CVS Pharmacy, Inc.,
9 and then I have various titles with other
10 entities.
11 Q. You said that you were a corporate
12 secretary for the public company. Is the public
13 company CVS Pharmacy, Inc.?
14 A. No.
15 Q. What is the public company?
16 A. CVS Health Corporation is the current
17 name.
18 Q. And in what position did you serve?
19 You said secretary?
20 A. I was vice president and corporate
21 secretary from 2011 through the end of 2013, and
22 I've been assistant secretary from 2013 to the
23 present, vice president and assistant secretary.
24 Q. Why were you asked, if you know, to

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1 hold that position?
2 MR. DELINSKY: I would just like to
3 object on privilege grounds.
4 Mr. Moffatt, if you can answer without
5 disclosing an attorney/client confidence, you
6 can answer. Otherwise I instruct you not to
7 answer.
8 A. I don't know why.
9 BY MR. ELSNER:
10 Q. Was it a result of pending litigation?
11 A. I can say that it was not a result of
12 litigation.
13 Q. Who asked you to serve in that role?
14 A. It would have been Doug Sgarro who was
15 the executive vice president and chief legal
16 officer. The corporate secretary retired from
17 the company, and I became -- I was, you know,
18 kind of his second-in-command, so when he
19 retired I moved up.
20 Q. You also served as the treasurer and
21 secretary of CVS Indianapolis which is the
22 distribution center for CVS in Indiana, is that
23 right?
24 A. I don't recall serving as treasurer.

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1 I believe I was secretary.
2 Q. All right. And was that from 2006 to
3 2011?
4 A. That sounds about right. We have many
5 entities, and keeping track of my specific title
6 with each entity is difficult.
7 Q. How many entities do you serve as an
8 officer of for CVS?
9 A. I don't know exactly, but hundreds.
10 Q. Why?
11 A. Mostly for administrative convenience.
12 Q. Administrative convenience to whom?
13 A. To the organization.
14 Q. What organization are you referring to
15 when you say that?
16 A. So there are 800-plus entities in the
17 CVS family of entities, and in order to provide
18 services to those entities I need to be able to
19 sign documents and so forth for the various
20 entities.
21 Q. So it's a convenience -- is it a
22 convenience to CVS Health, or is it a
23 convenience to the entities themselves?
24 A. It's to the entities themselves,

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1 because they all -- many of them need licenses,
2 leases, that sort of thing, so it's in order for
3 them to operate properly.

4 Q. When did the Indianapolis distribution
5 center for CVS start operations?

6 A. I don't know exactly. We acquired it
7 in the Revco acquisition, which was just before
8 I joined the company, so in 1997. I'm not sure
9 when it was first built or anything.

10 Q. But then you joined as a secretary of
11 CVS Indiana in 2006, is that right?

12 A. I believe the entity was formed
13 shortly before then, so when the entity was
14 formed I was either secretary or assistant
15 secretary.

16 Q. Who asked you to play that role?

17 A. It would have been my immediate
18 superior, Zenon Lankowsky.

19 Q. How large is the legal department at
20 CVS?

21 MR. DELINSKY: Object to form.

22 A. I don't know exactly, depends on who
23 you count, but in terms of lawyers
24 post-acquisition it's over 100 lawyers, and then

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1 there's paralegals and support staff and clerks
2 and so forth, so it's several hundred people.

3 BY MR. ELSNER:

4 Q. Okay. In 2012 you became the
5 president of CVS Indiana, is that right?

6 A. Yes.

7 Q. Why was that?

8 A. It was in connection with the
9 retirement of Mr. Lankowsky.

10 Q. He was the previous president?

11 A. Yes.

12 Q. And have you served as president of
13 CVS Indiana since 2014?

14 A. I believe so. Since before that, I
15 think you said it was 2012.

16 Q. That's right. I just said dates of
17 through 2014, so I was curious whether you
18 continued to perform that role.

19 A. Past that, yes.

20 Q. And you're the president today?

21 A. Yes.

22 Q. All right. Can you explain to me what
23 your duties and responsibilities are as
24 president of CVS Indiana?

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1 A. It's principally an administrative
2 function, so CVS Indiana needs a wide variety of
3 licenses and other documents that need to be
4 signed, and I sign documents on behalf of that
5 entity and the other entities.

6 Q. Are there board meetings for CVS
7 Indiana?

8 A. Yes.

9 Q. Do you attend those?

10 A. Yes.

11 Q. How often are those held?

12 A. Annually.

13 Q. Where are they held?

14 A. At CVS headquarters.

15 Q. Who attends the board meetings
16 generally?

17 A. Actually let me take a step back. I
18 was mistaken there. For CVS Indiana it's an LLC
19 that doesn't have a board, so we don't really
20 have board meetings. We have, you know -- the
21 member would meet of CVS Indiana, and the member
22 is a sole member, so I sign -- typically we do
23 actions by written consent of the member, and I
24 execute those.

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1 Q. So there are no annual or quarterly
2 meetings of CVS Indiana?

3 A. It doesn't --

4 MR. DELINSKY: Object to form.

5 A. It doesn't have a board, so it doesn't
6 have board meetings.

7 BY MR. ELSNER:

8 Q. But you said that the member signs the
9 documents, and it's all by consent, and you are
10 the member, is that right?

11 A. Well, there's -- a corporation is the
12 member. CVS Pharmacy, Inc. is the member.

13 Q. Okay. Are there minutes of those
14 meetings?

15 A. There would either be minutes, or
16 there would be a consent.

17 Q. Do you recall meetings in which there
18 were minutes taken for CVS Indiana?

19 A. I don't recall all the meetings that I
20 took part in.

21 Q. And have you been to the facility at
22 CVS Indiana?

23 A. No, I have not.

24 Q. Do you interact with the management

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| <p style="text-align: right;">Page 22</p> <p>1 and staff of CVS Indiana?</p> <p>2 A. No, not on a regular basis.</p> <p>3 Q. Do they keep you apprised of the</p> <p>4 activities of CVS Indiana?</p> <p>5 A. There are others at CVS that are</p> <p>6 responsible for operations of the distribution</p> <p>7 centers. They would keep them apprised. They</p> <p>8 wouldn't keep me apprised.</p> <p>9 Q. They don't keep you apprised as</p> <p>10 president?</p> <p>11 A. They keep the people that need to be</p> <p>12 apprised.</p> <p>13 Q. And generally what are those offices</p> <p>14 within CVS headquarters that are apprised?</p> <p>15 A. It would be the logistics department</p> <p>16 is generally responsible for distribution center</p> <p>17 operations and transportation.</p> <p>18 Q. You're also the president of CVS Rx</p> <p>19 Services, Inc., is that right?</p> <p>20 A. That's correct.</p> <p>21 Q. And when have you served in that role?</p> <p>22 A. I believe since 2012, same time as</p> <p>23 Indiana.</p> <p>24 Q. Were you formerly a secretary or</p> | <p style="text-align: right;">Page 24</p> <p>1 Q. We received a response to a request,</p> <p>2 and the response stated that CVS Rx Services</p> <p>3 distributed hydrocodone combination products</p> <p>4 into track 1 jurisdictions between April 15,</p> <p>5 2014 and September 30, 2014, and then it refers</p> <p>6 to something called the Chemung distribution</p> <p>7 period. Do you know what that is, the Chemung</p> <p>8 distribution period?</p> <p>9 A. I know that we have a distribution</p> <p>10 center in Chemung, New York.</p> <p>11 Q. And is that distribution center</p> <p>12 organized under CVS Rx Services?</p> <p>13 MR. DELINSKY: Object to form.</p> <p>14 A. Chemung is operated by CVS Rx</p> <p>15 Services, Inc.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Okay. And do you know why CVS was</p> <p>18 distributing hydrocodone products into Summit</p> <p>19 counties and Cuyahoga counties in Ohio between</p> <p>20 April 15th, 2014 and September 30th, 2014?</p> <p>21 MR. DELINSKY: Object to form.</p> <p>22 A. I don't know. I don't know that</p> <p>23 that's the case. I know that others at CVS</p> <p>24 would have been responsible for which</p> |
| <p style="text-align: right;">Page 23</p> <p>1 treasurer of CVS Rx Services, Inc.?</p> <p>2 A. I don't recall my exact titles, but in</p> <p>3 all likelihood I would have been secretary</p> <p>4 before I became president.</p> <p>5 Q. What does CVS Rx Services do?</p> <p>6 A. It was originally formed as the</p> <p>7 employer of our pharmacists in the various</p> <p>8 stores.</p> <p>9 Q. When?</p> <p>10 A. When was it formed? I don't know</p> <p>11 exactly. Probably around the late '90s, 1998,</p> <p>12 '99, something like that, I believe.</p> <p>13 Q. Okay. So are all pharmacists of CVS</p> <p>14 and CVS pharmacies employees of CVS Rx Services?</p> <p>15 A. There are others that are responsible</p> <p>16 for keeping track of who is employed by who, but</p> <p>17 my understanding is yes.</p> <p>18 Q. Okay. And what about the pharmacy</p> <p>19 itself, is the pharmacy itself organized under</p> <p>20 CVS Rx Services, or is it just the pharmacists?</p> <p>21 MR. DELINSKY: Object to form.</p> <p>22 A. Generally speaking, the pharmacies</p> <p>23 would be in different store operating entities.</p> <p>24 BY MR. ELSNER:</p> | <p style="text-align: right;">Page 25</p> <p>1 distribution centers would distribute into which</p> <p>2 stores.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. So as president of CVS Rx Services,</p> <p>5 what are your roles and responsibilities?</p> <p>6 A. Again, it's principally administrative</p> <p>7 to sign various licenses and documents that CVS</p> <p>8 Rx Services needs to sign.</p> <p>9 Q. Have you ever been to the Chemung</p> <p>10 distribution center?</p> <p>11 A. No, I have not.</p> <p>12 Q. The whole period of time when you've</p> <p>13 been operating as the president of CVS Indiana</p> <p>14 and the president of CVS Rx Services, you always</p> <p>15 worked out of the office in Rhode Island for</p> <p>16 CVS, is that right?</p> <p>17 A. That's correct, I've only worked out</p> <p>18 of the Woonsocket office.</p> <p>19 Q. Okay. Are there board meetings or</p> <p>20 minutes of meetings related to CVS Rx Services?</p> <p>21 A. Yes.</p> <p>22 Q. And how often do you meet?</p> <p>23 A. It would be annually.</p> <p>24 Q. And where are those meetings held?</p> |

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| <p style="text-align: right;">Page 26</p> <p>1 A. At Woonsocket.</p> <p>2 Q. Do you receive any compensation from</p> <p>3 CVS Indiana or CVS Rx Services for your role as</p> <p>4 president of those entities?</p> <p>5 A. Unfortunately, no.</p> <p>6 Q. So all of your payment is from CVS</p> <p>7 Health?</p> <p>8 A. It's from CVS Pharmacy is my employer,</p> <p>9 and it's as a corporate attorney.</p> <p>10 Q. Can you explain to me the relationship</p> <p>11 between CVS Pharmacy, CVS Health, and CVS</p> <p>12 Indiana, and CVS Rx Services?</p> <p>13 MR. DELINSKY: Object to form.</p> <p>14 A. That's a very broad question. CVS</p> <p>15 Health Corporation is the public company. It's</p> <p>16 a holding company. It's formed in Delaware and</p> <p>17 doesn't have any employees. CVS Pharmacy is our</p> <p>18 main operating company. It's a Rhode Island</p> <p>19 corporation. It employs me. It employs a</p> <p>20 number of people. And then CVS Pharmacy is the</p> <p>21 parent company to Rx Services and CVS Indiana</p> <p>22 and a large number of other entities.</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. Does CVS Indiana and CVS Rx Services</p> | <p style="text-align: right;">Page 28</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. I want to make sure I understood</p> <p>3 clearly what you were talking about, because you</p> <p>4 talked about store entities. When you referred</p> <p>5 to store entities, does that include</p> <p>6 distribution centers, or are you speaking about</p> <p>7 the pharmacies themselves?</p> <p>8 A. I'm talking about entities that</p> <p>9 operate stores. Distribution center entities</p> <p>10 would be different, and I can't recall, it was a</p> <p>11 long time ago that we did the agency agreements.</p> <p>12 I don't recall what the -- I don't know what the</p> <p>13 current state of those are, but many years ago</p> <p>14 we did agency agreements with at least some of</p> <p>15 the distribution center entities, but I can't</p> <p>16 remember if Rx Services has one or if Indiana</p> <p>17 has one.</p> <p>18 Q. When is the last time you think you've</p> <p>19 looked at those, if ever?</p> <p>20 A. I have looked at them, but I haven't</p> <p>21 looked at them in many years, probably when we</p> <p>22 were doing restructuring in the mid 2000s.</p> <p>23 Q. So they're not reviewed annually?</p> <p>24 A. They're not.</p> |
| <p style="text-align: right;">Page 27</p> <p>1 pay any fees to CVS Pharmacy as the operating</p> <p>2 company for legal advice or for advice on their</p> <p>3 suspicious order monitoring program or anything</p> <p>4 like that?</p> <p>5 MR. DELINSKY: Object to form.</p> <p>6 A. Others at CVS would be responsible for</p> <p>7 how intercompany charges work. I'm not sure</p> <p>8 exactly what charges might be paid between the</p> <p>9 entities.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. But you're the president of those</p> <p>12 entities, so in your role as president of those</p> <p>13 entities, what is your understanding? Are there</p> <p>14 contracts between the subsidiary companies and</p> <p>15 CVS Pharmacy?</p> <p>16 MR. DELINSKY: Object to form.</p> <p>17 A. There are contracts between CVS</p> <p>18 Pharmacy and the store entities. There are also</p> <p>19 contracts with non-store entities. There's an</p> <p>20 agency agreement where CVS Pharmacy provides</p> <p>21 various services to the subsidiaries. It also</p> <p>22 provides a number of services simply because</p> <p>23 it's the parent company of the various entities,</p> <p>24 and can provide services to its subsidiaries.</p> | <p style="text-align: right;">Page 29</p> <p>1 Q. I think you also said that you have</p> <p>2 responsibility at CVS for licensing issues.</p> <p>3 Does that include DEA licenses?</p> <p>4 MR. DELINSKY: Object to form.</p> <p>5 A. So I said that I sign documents</p> <p>6 related to licensing, so it would -- well, I</p> <p>7 also have people that work for me that are</p> <p>8 responsible for signing DEA documents, but I</p> <p>9 have signed DEA documents in the past.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Are you the head of the licensing</p> <p>12 division for CVS?</p> <p>13 MR. DELINSKY: Object to form.</p> <p>14 A. We don't have a licensing division, so</p> <p>15 licensing is one of our functions in the legal</p> <p>16 department, and the licensing -- the head of</p> <p>17 licensing is a licensing director, and she</p> <p>18 reports to me.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. Okay. And how many people are under</p> <p>21 her?</p> <p>22 A. 30 plus.</p> <p>23 Q. And who is that licensing director?</p> <p>24 A. Her name is Linda Cimbron.</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 Q. So I'm just taking a look at your 2 LinkedIn page, and it's written here, it says -- 3 it describes you as the vice president, 4 assistant secretary and assistant general 5 counsel for CVS Health Corporation. And that's 6 your current role, is that right? 7 A. That's my role with CVS Health 8 Corporation, yes. 9 Q. And then it says under here, it says 10 Licensing, and it says "Oversees the licensing 11 department which obtains and maintains all 12 licenses for the company's 10,000-plus 13 facilities, over 150,000 licenses," is that 14 correct? 15 A. That's correct. As I said, Linda 16 Cimbron, licensing director, reports to me. So 17 I oversee the licensing function. 18 Q. So you oversee the licensing 19 department? 20 A. Yes. 21 Q. And then it says "Interacts with 22 government officials including DEA, state boards 23 of pharmacy, and alcohol boards." Is that 24 accurate?</p> | <p style="text-align: right;">Page 32</p> <p>1 controlled substance, you need a DEA license to 2 do so, is that right? 3 MR. DELINSKY: Object to form. 4 A. Yes, I believe that's right. 5 BY MR. ELSNER: 6 Q. And CVS Indiana had a DEA license to 7 distribute controlled substances, is that right? 8 A. It definitely had a DEA registration, 9 yes. 10 Q. And is the same true for the CVS 11 facility, the distribution center in Chemung, 12 New York? 13 A. Yes. 14 Q. What about CVS Pharmacy, does CVS 15 Pharmacy have its own DEA license? 16 MR. DELINSKY: Object to form. 17 A. So the DEA registrations are by 18 facility, so there are facilities that CVS 19 Pharmacy, Inc. operates that have DEA 20 registrations, there are actually many. 21 BY MR. ELSNER: 22 Q. And is it CVS Pharmacy which holds 23 those licenses, or it's the entities themselves? 24 A. The entities them -- the entities that</p> |
| <p style="text-align: right;">Page 31</p> <p>1 A. It was more accurate a couple years 2 ago when that was written. Now we have a board 3 of pharmacy practice that does a lot more of the 4 interaction with the boards of pharmacy. We 5 also have an attorney that works on government 6 investigations, including DEA. So, you know, 7 it's not as accurate today as it was several 8 years ago. 9 Q. When was this written? 10 A. I don't remember. A couple years ago, 11 I think. I might have updated numbers, but I 12 haven't changed a lot of it. 13 Q. Every CVS distribution center, 14 including CVS Indiana, holds a DEA license, is 15 that right? 16 A. I don't recall if they all have -- 17 take a step back. We used to have distribution 18 centers that had full registrations, and then we 19 had other facilities that did what was called 20 cross-talking, so they wouldn't necessarily have 21 drugs in the facility. I don't recall what the 22 current structure of the distribution centers 23 is, so I don't know if every one of them has. 24 Q. Okay. But in order to distribute a</p> | <p style="text-align: right;">Page 33</p> <p>1 operate the facilities would hold the licenses, 2 so in some instances that is CVS Pharmacy, in 3 some instances it's another entity like CVS 4 Indiana or CVS Rx Services. 5 Q. What is your understanding of why the 6 DEA requires distributors and dispensers of 7 controlled substances to have a DEA 8 registration? 9 MR. DELINSKY: Object to form. 10 A. I haven't really thought of it. It's 11 been a requirement under their regulations, but 12 you'd have to ask somebody at the DEA why they 13 regulate the way they regulate. 14 BY MR. ELSNER: 15 Q. Well, you're in charge of the whole 16 licensing department, everyone reports to you, 17 so I wanted to understand from you what you 18 believe the reason is that the DEA has a 19 registration requirement for distributing and 20 dispensing controlled substances. 21 MR. DELINSKY: Object to form. 22 A. Again, you'd have to ask somebody at 23 the DEA why they have regulations. I'm not 24 sure. I know that they need to -- we have</p> |

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1 separate registrations for every facility so
2 they want the facilities that have controlled
3 substances to be registered in some way.
4 BY MR. ELSNER:
5 Q. Why?
6 A. So I don't know.
7 Q. Are you familiar with the Controlled
8 Substances Act?
9 A. Generally, yes.
10 Q. What is your understanding of the
11 Controlled Substances Act?
12 MR. DELINSKY: And, Mr. Moffatt, if
13 you can answer that question without it
14 disclosing attorney/client confidences you may
15 answer. If you can't, I instruct you not to
16 answer.
17 BY MR. ELSNER:
18 Q. Sir, you're a lawyer. You understand
19 attorney/client confidences and privileges?
20 MR. DELINSKY: Object to form.
21 A. Generally speaking, yes.
22 BY MR. ELSNER:
23 Q. So throughout this whole deposition,
24 I'm not trying to elicit a single response that

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1 discloses any kind of attorney/client privilege,
2 so there's no need for a continued objection to
3 that. When I ask you a question, I want you to
4 assume that I'm not asking you to divulge any
5 attorney/client privilege. Do you understand
6 that?
7 A. I understand you saying that, but it's
8 difficult given my role -- my principal role
9 being an attorney and interacting with other
10 attorneys all day every day, it's hard to
11 separate, you know, what I know based on
12 discussions with the people that have expertise
13 in the Controlled Substances Act as opposed to
14 me. I'm a corporate lawyer, so general
15 corporate law I know.
16 Q. That's fine. What is your
17 understanding of the Controlled Substances Act?
18 MR. DELINSKY: Same objection and
19 instruction.
20 A. I don't have a specific understanding
21 of the Controlled Substances Act. I know it's a
22 law that's out there.
23 BY MR. ELSNER:
24 Q. Have you ever read it?

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1 A. No, I have not read the act in its
2 entirety.
3 Q. Do you understand that controlled
4 substances are highly addictive?
5 MR. DELINSKY: Object to form.
6 A. I don't know. No, I don't know that
7 controlled substances are -- I think there are
8 other people at CVS that will respond -- that
9 are focused on that sort of thing.
10 BY MR. ELSNER:
11 Q. So as the president of CVS Indiana and
12 as the president of CVS Rx Services, you do not
13 know that controlled substances can be highly
14 addictive?
15 MR. DELINSKY: Object to form.
16 A. Others at CVS are responsible for
17 operations and so forth, and I have no view on
18 that.
19 BY MR. ELSNER:
20 Q. I'm not asking whether anybody else
21 knows they're highly addictive. I'm just asking
22 you, are controlled substances highly addictive?
23 MR. DELINSKY: Object to form.
24 BY MR. ELSNER:

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1 Q. Yes, no, or I don't know.
2 A. Other people at CVS know. I don't
3 have an opinion on that.
4 Q. You don't know?
5 MR. DELINSKY: Object to form.
6 A. Other people at CVS know. I don't
7 have an opinion.
8 BY MR. ELSNER:
9 Q. You don't have an opinion one way or
10 the other?
11 MR. DELINSKY: Object to form. Asked
12 and answered.
13 A. Other people at CVS know about that.
14 It's not my role, and I don't have an opinion.
15 BY MR. ELSNER:
16 Q. Do you believe that there's a risk
17 that controlled substances like an opioid may be
18 diverted?
19 MR. DELINSKY: Object to form.
20 A. Other people at CVS are responsible
21 for operations and so forth. I don't have an
22 opinion on that.
23 BY MR. ELSNER:
24 Q. Has CVS ever distributed a Schedule II

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| <p style="text-align: right;">Page 38</p> <p>1 drug, to your knowledge?</p> <p>2 A. To my knowledge, no.</p> <p>3 Q. Why not?</p> <p>4 MR. DELINSKY: Same instruction with</p> <p>5 regard to the attorney/client privilege, to the</p> <p>6 extent that your knowledge is based on</p> <p>7 attorney/client communications.</p> <p>8 A. Other people at CVS made that</p> <p>9 decision. You know, I've been there since '97.</p> <p>10 The company has been around longer than that.</p> <p>11 It was before I got there.</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. So you don't know?</p> <p>14 A. Other people at CVS would have been</p> <p>15 responsible for that.</p> <p>16 Q. Who?</p> <p>17 A. I'm not sure.</p> <p>18 Q. Are you sure someone is responsible</p> <p>19 for that?</p> <p>20 A. Other people at CVS are responsible</p> <p>21 for all the operations, compliance, logistics.</p> <p>22 We have huge departments that are responsible</p> <p>23 for those things. I'm not responsible for those</p> <p>24 things.</p> | <p style="text-align: right;">Page 40</p> <p>1 Q. The Indiana distribution center for</p> <p>2 CVS was distributing hydrocodone products until</p> <p>3 hydrocodone was rescheduled as a Schedule II</p> <p>4 drug in October of 2014, is that right?</p> <p>5 MR. DELINSKY: Object to form. Same</p> <p>6 objection as to attorney/client privilege.</p> <p>7 A. Other people at CVS were responsible</p> <p>8 for what was distributed where. I don't have</p> <p>9 any knowledge of my own on that subject.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. So as the president of CVS Indiana,</p> <p>12 you don't know whether CVS Indiana was</p> <p>13 distributing hydrocodone products until they</p> <p>14 were rescheduled?</p> <p>15 MR. DELINSKY: Object to form.</p> <p>16 A. Others at CVS were responsible for</p> <p>17 that. I don't have any knowledge of my own.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. I've marked this document as the first</p> <p>20 exhibit. This is Motley Rice 5.</p> <p>21 (Whereupon, CVS-Moffatt-1 was marked</p> <p>22 for identification.)</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. Sir, this is a letter from the US</p> |
| <p style="text-align: right;">Page 39</p> <p>1 Q. CVS has distributed Schedule III drugs</p> <p>2 to CVS pharmacies, is that right?</p> <p>3 MR. DELINSKY: Object to form.</p> <p>4 A. My understanding is that our</p> <p>5 registrations are for Schedules III through V,</p> <p>6 so yes.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. And CVS Indiana and CVS Rx Services</p> <p>9 through the CVS Chemung distribution center</p> <p>10 distributed Schedule III drugs, is that correct?</p> <p>11 MR. DELINSKY: Object to form.</p> <p>12 A. Other people at CVS were responsible</p> <p>13 for the actual operations, but my understanding</p> <p>14 is we had the registrations for Schedules III</p> <p>15 through V, and that's what was distributed by</p> <p>16 those distribution centers.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. And that they distributed those drugs</p> <p>19 into Cuyahoga and Summit Counties, is that</p> <p>20 right?</p> <p>21 MR. DELINSKY: Object to form.</p> <p>22 A. I don't have any specific knowledge of</p> <p>23 where the distribution centers distributed.</p> <p>24 BY MR. ELSNER:</p> | <p style="text-align: right;">Page 41</p> <p>1 Department of Justice, the Drug Enforcement</p> <p>2 Administration, signed from Joseph Rannazzisi</p> <p>3 who is the deputy assistant administrator for</p> <p>4 the Office of Diversion Control for the DEA, and</p> <p>5 the letter was sent to CVS Indiana, LLC, dated</p> <p>6 September 27, 2006.</p> <p>7 Do you see that, sir?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever seen this letter before?</p> <p>10 MR. DELINSKY: I'd just like to assert</p> <p>11 an objection.</p> <p>12 Mr. Elsner, I assume you do not mean</p> <p>13 in the course of preparing for the deposition.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. I haven't asked whether you've seen it</p> <p>16 in the course of preparing for the deposition.</p> <p>17 Have you ever seen it before?</p> <p>18 A. I have seen it in the course of</p> <p>19 preparing for the deposition, never before that.</p> <p>20 Q. Never before that.</p> <p>21 A. No.</p> <p>22 Q. So as the president of CVS Indiana, no</p> <p>23 one ever shared this letter with you?</p> <p>24 MR. DELINSKY: Object to form.</p> |

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| <p style="text-align: right;">Page 42</p> <p>1 A. Not that I recall. I don't recall 2 seeing it before preparing for the deposition. 3 BY MR. ELSNER: 4 Q. And as the person responsible for 5 licensing for CVS, you've never seen this 6 document before? 7 MR. DELINSKY: Object to form. 8 A. I don't recall seeing it before 9 preparing for the deposition. 10 BY MR. ELSNER: 11 Q. Okay. In the second sentence of the 12 letter it says "The purpose of this letter is to 13 reiterate the responsibilities of controlled 14 substance distributors in view of the 15 prescription drug abuse problem our nation 16 currently faces." 17 Did I read that correctly? 18 A. Yes. 19 Q. Were you aware that there is -- that 20 there was and is a prescription drug abuse 21 problem that the United States nation faces as 22 of September 27, 2006? 23 MR. DELINSKY: Object to form. 24 A. I'm aware that that's what this</p> | <p style="text-align: right;">Page 44</p> <p>1 that I can agree or disagree. I don't have any 2 information of my own that would allow me to 3 form an opinion as to whether this is accurate. 4 BY MR. ELSNER: 5 Q. Well, independent of the document, did 6 you believe in 2006 that there was a drug abuse 7 problem in the United States? 8 MR. DELINSKY: Object to form. Same 9 privilege, objection, and instruction. 10 A. I don't have -- I'm a corporate 11 lawyer. I don't have information of my own that 12 would allow me to form an opinion on that. 13 BY MR. ELSNER: 14 Q. And nobody brought to your attention 15 the issue that the DEA felt there was a drug 16 abuse problem in the United States and felt so 17 strongly about it that it sent a letter to every 18 single distribution center in the United States 19 distributing controlled substances? 20 MR. DELINSKY: Object to the form of 21 the question. 22 Mr. Moffatt, again, to the extent that 23 that question calls for the disclosure of 24 attorney/client information, I instruct you not</p> |
| <p style="text-align: right;">Page 43</p> <p>1 sentence says. I don't know anything about what 2 Mr. Rannazzisi was saying, the context of how 3 this was prepared or why it was prepared, so I 4 don't know where -- how he came to this 5 conclusion. 6 BY MR. ELSNER: 7 Q. So do you believe that there was a 8 drug abuse problem that the United States nation 9 faces as of 2006? 10 MR. DELINSKY: Object to form. 11 Mr. Moffatt, to the extent that that 12 question calls for attorney/client privileged 13 information, I instruct you not to answer 14 insofar as it would require the disclosure of 15 that information. 16 A. So could you repeat the question? 17 MR. ELSNER: Can you read it back, 18 please? 19 (Whereupon, the reporter read back the 20 pending question.) 21 MR. DELINSKY: Same objections and 22 instruction. 23 A. I don't know. I don't know anything 24 about the background of this, so I don't know</p> | <p style="text-align: right;">Page 45</p> <p>1 to answer on privilege grounds. 2 A. I don't know anything about who this 3 was sent to in addition. I know it was sent to 4 CVS Indiana. I don't know anything about who it 5 was sent to, anything about the background of 6 the letter, so... 7 BY MR. ELSNER: 8 Q. No copy of this letter was in the 9 licensing department? 10 MR. DELINSKY: Object to form. 11 A. Not to my knowledge, but I really 12 don't know. 13 BY MR. ELSNER: 14 Q. If you turn to the end of the third 15 paragraph on the first page, it reads in the 16 last two lines "Congress has expressly declared 17 that the illegal distribution of controlled 18 substances has a substantial and detrimental 19 effect on the health and general welfare of the 20 American people." 21 Did I read that correctly? 22 A. Yes. 23 Q. Were you aware that Congress had made 24 that declaration?</p> |

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| <p style="text-align: right;">Page 46</p> <p>1 A. I've never seen this before preparing 2 for the deposition, so I was not aware of that. 3 Q. Independent of the document, were you 4 aware that Congress had expressly declared that 5 the illegal distribution of controlled 6 substances has a substantial and detrimental 7 effect on the health and general welfare of the 8 American people? 9 MR. DELINSKY: Object to form. 10 Objection insofar as it calls for the disclosure 11 of privileged information. To the extent it 12 does, I instruct you that you do not answer. 13 A. I had no information about this -- 14 Congress declares things, hundreds of things 15 every day, I'm sure, but I had no knowledge of 16 this. 17 BY MR. ELSNER: 18 Q. Well, they do, but this specifically 19 relates to the licensing and the distribution of 20 controlled substances which is a department that 21 you oversaw at CVS, so were you aware that 22 Congress had made that declaration? 23 MR. DELINSKY: Object to form. Same 24 objection and instruction as to privilege.</p> | <p style="text-align: right;">Page 48</p> <p>1 MR. DELINSKY: Object to the form of 2 the question. 3 A. I don't know what Congress was talking 4 about. This letter is from the DEA and, you 5 know, at the beginning they're talking about 6 controlled substance distributors, but I don't 7 know what Congress was talking about when they 8 made this declaration. 9 BY MR. ELSNER: 10 Q. And you've never read the Controlled 11 Substances Act? 12 MR. DELINSKY: Objection to form. 13 Asked and answered. 14 A. I have not read -- sat down and read 15 it in its entirety. 16 BY MR. ELSNER: 17 Q. On the second page in the second 18 paragraph at the last sentence, or second to 19 last sentence, it reads, Nonetheless, given the 20 extent of the prescription drug abuse in the 21 United States, along with the dangerous and 22 potentially lethal consequences of such abuse, 23 even just one distributor that uses its DEA 24 registration to facilitate diversion can cause</p> |
| <p style="text-align: right;">Page 47</p> <p>1 A. This refers to illegal distribution of 2 controlled substances. That could be something 3 completely outside of what I do. 4 BY MR. ELSNER: 5 Q. Well, you understand that the 6 distribution center could distribute a drug 7 illegally, correct? 8 MR. DELINSKY: Object to form. 9 A. I believe that's true, but they could 10 also be talking about cocaine being imported 11 into the United States or something like that. 12 Illegal distribution of -- 13 BY MR. ELSNER: 14 Q. This deals with the distribution and 15 dispensing of controlled substances under the 16 Controlled Substances Act, which doesn't include 17 the distribution of cocaine and heroin. Those 18 aren't drugs which can be prescribed and 19 distributed in the United States. They're 20 Schedule I drugs, so what we're talking about 21 here are controlled substances like opioids, 22 hydrocodone, OxyContin. Were you aware that 23 Congress had declared that with respect to these 24 types of controlled substances?</p> | <p style="text-align: right;">Page 49</p> <p>1 enormous harm. 2 Are you aware of that? 3 MR. DELINSKY: Object to form. 4 A. You read the sentence accurately. I 5 think you might have stuck a second extra "the" 6 in there. But that's the extent of what I know 7 about it, what you just read. 8 BY MR. ELSNER: 9 Q. Okay. You did not know that the DEA 10 felt that a distribution center, that if even 11 one distribution center -- strike that. Let me 12 start over. 13 You were not aware that if even one 14 distribution center uses its DEA registration to 15 facilitate diversion that it could cause 16 enormous harm in the United States? 17 MR. DELINSKY: Object to form. 18 A. I agree that you're reading that 19 sentence correctly. I would also look up to the 20 first sentence in that paragraph which says that 21 the "DEA recognizes...the overwhelming majority 22 of registered distributors act lawfully and take 23 appropriate measures to prevent diversion," and 24 I would believe our distribution centers would</p> |

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1 be among the ones referenced in the first
2 sentence.
3 BY MR. ELSNER:
4 Q. What is your basis for making that
5 statement? What did you know about how the
6 distribution center in Indiana was conducting
7 its operations for controlled substances?
8 A. Others at CVS were responsible for
9 operations of the facility and for compliance,
10 and they would be responsible for those things.
11 Q. So you don't have personal knowledge
12 of that? That would be other people that have
13 that knowledge?
14 A. I was not involved in operations. I'm
15 a lawyer.
16 Q. Okay. Do you agree with the statement
17 here that if even one distributor uses its DEA
18 registration to facilitate diversion it could
19 cause enormous harm?
20 MR. DELINSKY: Object to form.
21 A. I have no basis for coming to that
22 conclusion.
23 BY MR. ELSNER:
24 Q. In the middle of Page 2, it begins the

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1 sentence "The DEA regulations." Do you see
2 where I'm at just before the indentation?
3 A. Yes.
4 Q. It reads "The DEA regulations require
5 all distributors to report suspicious orders of
6 controlled substances. Specifically, the
7 regulations state in 21 CFR 1301.74(b):
8 "The registrant shall design and
9 operate a system to disclose to the registrant
10 suspicious orders of controlled substances."
11 Were you aware of that responsibility?
12 MR. DELINSKY: Object to the form of
13 the question. Further object to the extent it
14 calls for the disclosure of attorney/client
15 communications. If that's the case, I instruct
16 you not to answer, Mr. Moffatt.
17 A. I was not aware of -- before I read
18 this letter in preparation for the deposition, I
19 was not aware of this.
20 BY MR. ELSNER:
21 Q. Did you understand that the DEA had
22 defined suspicious orders to include orders of
23 unusual size, orders deviating substantially
24 from a normal pattern, and orders of unusual

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1 frequency?
2 MR. DELINSKY: Object to the form of
3 the question. Same objection and instruction as
4 to privilege.
5 A. Others at CVS would have been
6 responsible for complying with the DEA
7 regulations related to distribution.
8 BY MR. ELSNER:
9 Q. Did CVS have an electronic system in
10 place in 2006 when it received this letter to
11 measure whether specific orders it was receiving
12 from its pharmacies for hydrocodone were of
13 unusual size, frequency?
14 MR. DELINSKY: Object -- excuse me --
15 object to the form of the question. Same
16 objection as to privilege, and same instruction.
17 A. Others at CVS would have been
18 responsible for such a system.
19 BY MR. ELSNER:
20 Q. Are you aware that CVS did not have a
21 system in place to electronically measure these
22 types of orders in 2006?
23 MR. DELINSKY: Object to the form of
24 the question.

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1 A. Others at CVS would have been
2 responsible for that. I'm not -- I have no
3 basis to know whether or not we had a system.
4 BY MR. ELSNER:
5 Q. Well, as the head of licensing for
6 CVS, does it concern you that when you received
7 this letter from the DEA in 2006 that you didn't
8 actually have an electronic system in place to
9 measure for the elements that it was requiring
10 you to measure for?
11 MR. DELINSKY: Object to the form of
12 the question.
13 A. Others at CVS would have been
14 responsible for that.
15 BY MR. ELSNER:
16 Q. And you have no personal knowledge?
17 A. I have no personal knowledge. Others
18 at CVS would have been responsible for that.
19 MR. ELSNER: Mark this next document
20 as Moffatt Exhibit 2, this is MR 7.
21 (Whereupon, CVS-Moffatt-2 was marked
22 for identification.)
23 BY MR. ELSNER:
24 Q. Mr. Moffatt, this is another letter

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1 from Mr. Joseph Rannazzisi which was sent to all
2 the distribution centers in the United States.
3 The date was December 27, 2007.
4 Have you ever seen this letter before
5 preparing for this deposition?
6 A. I don't recall if I've seen this
7 before. I didn't see it before preparing for
8 the deposition. I don't recall if I saw it in
9 connection with preparing.
10 Q. Let me just break that down.
11 Before your deposition prep with
12 counsel, had you ever seen this letter before?
13 A. I don't think so.
14 Q. Okay. The first line of the letter
15 says that "This letter is being sent to every
16 entity in the United States registered with the
17 Drug Enforcement" Agency "to manufacture or
18 distribute controlled substances."
19 Did I read that correctly?
20 A. It's Drug Enforcement Administration.
21 You said agency.
22 Q. I'm sorry.
23 A. But otherwise, yes.
24 Q. Okay. And as the head of licensing

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1 for CVS, you do not recall ever receiving this
2 document before?
3 MR. DELINSKY: Object to form.
4 A. I've seen many, many documents. I
5 don't specifically recall seeing this one. It's
6 over ten years ago.
7 BY MR. ELSNER:
8 Q. This, in the second paragraph in the
9 second sentence, it cites a code section, and
10 then it says "specifically requires that a
11 registrant 'design and operate a system to
12 disclose to the registrant suspicious orders of
13 controlled substances."
14 Did CVS in Indiana have a system in
15 place as of December 27, 2007 to electronically
16 monitor for suspicious orders of controlled
17 substances?
18 MR. DELINSKY: Object to form.
19 A. Others at CVS would have been
20 responsible for such a system. I believe this
21 is the same code section as the previous
22 letter --
23 BY MR. ELSNER:
24 Q. That's right.

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1 A. -- from the previous year.
2 Q. It's the Controlled Substances Act,
3 that's right.
4 Does it concern you that CVS didn't
5 have a system in place to electronically monitor
6 for suspicious orders of controlled substances
7 as of December 27, 2007?
8 MR. DELINSKY: Object to the form of
9 the question.
10 A. Others at CVS would have been
11 responsible for such a system.
12 BY MR. ELSNER:
13 Q. Do you understand that a violation of
14 the Controlled Substances Act could result in a
15 distribution center losing its license to
16 distribute controlled substances?
17 A. I'm generally aware of, you know, the
18 implications of violations, but I have no
19 specific knowledge. It's not my area of
20 expertise. I'm a corporate lawyer.
21 Q. But you understand that CVS and other
22 pharmacies from time to time have had their
23 licenses suspended, correct?
24 MR. DELINSKY: Object to the form of

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1 the question.
2 Mr. Moffatt, further object on
3 privilege grounds. To the extent that you
4 possess any responsive information that you
5 obtained in the context of attorney/client
6 communications, I instruct you not to disclose
7 that information.
8 A. Information that it would have
9 received regarding other pharmacies or CVS would
10 have been through attorney communications.
11 BY MR. ELSNER:
12 Q. Well, you've signed settlements with
13 the DEA in which you entered a settlement with
14 them to avoid the suspension of your
15 registration for a pharmacy, correct?
16 MR. DELINSKY: Object to the form of
17 the question.
18 A. I have signed settlements for various
19 entities, other attorneys work on those
20 settlements and they come to me at the end when
21 they're ready to be signed. I don't know the
22 background as to why things were signed or
23 whether they were signed to avoid a suspension
24 or anything like that. I've signed documents,

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| <p style="text-align: right;">Page 58</p> <p>1 but I don't know the full circumstances. You'd 2 have to give me the actual settlement that 3 you're talking about. 4 BY MR. ELSNER: 5 Q. Well, I'm just talking generally. 6 You understand the DEA has the 7 authority and the ability to suspend or remove a 8 license for a distributor to distribute a 9 controlled substance, you understand that, 10 right? 11 MR. DELINSKY: Object to form. Same 12 objection and same instruction as to privilege 13 in addition. 14 A. I'm aware based on attorney 15 communications. 16 BY MR. ELSNER: 17 Q. What was your understanding of why a 18 license was required at all to distribute 19 controlled substances? 20 MR. DELINSKY: Object to form. Same 21 objection and instruction to the extent the 22 question also implicates attorney/client 23 communications. 24 A. As we discussed earlier, the DEA set</p> | <p style="text-align: right;">Page 60</p> <p>1 the question. Further object on privilege 2 grounds. 3 To the extent this calls for 4 attorney/client communications, I'd instruct you 5 not to answer, Mr. Moffatt. 6 And I'd just state for the record that 7 the attorney/client privilege applies to -- not 8 only to information exchanged in connection with 9 specific instances, but also to general 10 information exchanged for the purpose of 11 obtaining legal advice. 12 A. So other people at CVS are responsible 13 for operations and compliance, and they 14 understand the implications of, you know, the 15 need for licenses and for violations. 16 BY MR. ELSNER: 17 Q. I'm not asking you what anyone else 18 understands about the licensing requirements. 19 I'm just asking you, because you're the head of 20 the licensing department, you oversee it, and 21 you have no understanding of the reason for the 22 license or the consequences of not fulfilling 23 your obligations under the controlled substances 24 and its implications for your ability to lose</p> |
| <p style="text-align: right;">Page 59</p> <p>1 up the regulatory regime. I don't have 2 information as to why it was set up the way it 3 was set up. 4 BY MR. ELSNER: 5 Q. So you were just signing paper and 6 moving paper, right? You don't understand what 7 the basis or need is for the license, why it's 8 required and what could result if you don't 9 fulfill your responsibilities? 10 MR. DELINSKY: Object to form. Same 11 objection and same instruction as to privilege 12 to the extent it pertains. 13 A. What I know about it is based on 14 attorney communications. 15 BY MR. ELSNER: 16 Q. I'm not talking about a specific 17 instance. I'm talking generally. 18 You're the head of the licensing 19 department, you oversee them, and you have no 20 understanding of what the purpose of the license 21 is for the controlled substance or what could 22 result if you don't fulfill the requirements of 23 the Controlled Substances Act, is that right? 24 MR. DELINSKY: Object to the form of</p> | <p style="text-align: right;">Page 61</p> <p>1 the license, is that right? 2 MR. DELINSKY: Object to form. Same 3 objection as to privilege. Same instruction as 4 to privilege. 5 A. That's not right. I have information, 6 but all my information would have been received 7 in the context of attorney information being 8 passed to me from other areas of the legal 9 department. 10 BY MR. ELSNER: 11 Q. That simply can't be true. I'm not 12 asking you about a particular instance or 13 investigation. I'm asking you generally as the 14 head of the licensing department, do you have an 15 understanding of what the licensing requirements 16 were for distributing controlled substances? 17 MR. DELINSKY: Object to the form of 18 the question. 19 I instruct the witness not to answer 20 based on his prior two answers. 21 A. Again, my information was based on 22 information I received from other attorneys. 23 BY MR. ELSNER: 24 Q. The next sentence in that same</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 paragraph reads "The regulation clearly 2 indicates that it is the sole responsibility of 3 the registrant to design and operate such a 4 system." 5 Did you understand that it was the 6 sole responsibility for CVS Indiana to design 7 and operate a system to prevent diversion of 8 controlled substances? 9 MR. DELINSKY: Object to the form of 10 the question. 11 Same objection, same instruction, 12 Mr. Moffatt. 13 A. You read the sentence as it's written 14 here. I have no basis to agree or disagree with 15 the conclusion that it clearly indicates -- what 16 it says it indicates. 17 BY MR. ELSNER: 18 Q. Did you know that as the president of 19 CVS Indiana that it was CVS Indiana's sole 20 responsibility to design such a system? 21 MR. DELINSKY: Object to form. Asked 22 and answered. 23 A. As I said, that's what the sentence 24 says, but I don't have any basis to agree or</p> | <p style="text-align: right;">Page 64</p> <p>1 whether there's an opioid crisis or not in the 2 United States? 3 MR. DELINSKY: Object to the form of 4 the question. Asked and answered. 5 A. The information that I've received 6 would have been in the context of being a 7 corporate attorney. 8 BY MR. ELSNER: 9 Q. So I want to drill down on this a 10 little bit. 11 If someone told you that there was an 12 opioid crisis in the United States, and you're 13 an employee of CVS, you would consider that a 14 privileged communication? 15 A. It would depend on the context. I 16 don't think anybody would come out of the blue 17 and just walk up to me and say that. 18 Q. So you've never heard -- have you ever 19 heard that there's an opioid crisis in the 20 United States? 21 MR. DELINSKY: Object to the form. 22 Asked and answered. I instruct the witness not 23 to answer further. 24 BY MR. ELSNER:</p> |
| <p style="text-align: right;">Page 63</p> <p>1 disagree that it's its sole responsibility. 2 BY MR. ELSNER: 3 Q. And you never saw this in 2007? 4 MR. DELINSKY: Object to form. Asked 5 and answered. 6 A. I don't recall seeing it. I see many, 7 many documents. 8 BY MR. ELSNER: 9 Q. Do you believe there's an opioid 10 crisis in the United States? 11 MR. DELINSKY: Object to form. 12 A. I don't have any basis to characterize 13 anything as a crisis. I'm a corporate lawyer. 14 BY MR. ELSNER: 15 Q. What's your understanding? 16 MR. DELINSKY: Object to form. 17 Further object to the extent that that question 18 calls for the disclosure of attorney/client 19 privilege information. 20 A. I don't have any personal information. 21 I've gathered information on -- you know, based 22 on my services as an attorney for the company. 23 BY MR. ELSNER: 24 Q. So you have no understanding at all</p> | <p style="text-align: right;">Page 65</p> <p>1 Q. Are you going to answer the question? 2 A. I was instructed not to answer. No. 3 MR. DELINSKY: I'd just like to make 4 clear for the record the objection is on -- the 5 instruction was based on privilege. 6 BY MR. ELSNER: 7 Q. I'm going to show you Motley Rice 4. 8 MR. DELINSKY: Before you show the 9 witness the exhibit, let's break. I think we've 10 been going about an hour. 11 MR. ELSNER: Okay. Happy to. 12 THE VIDEOGRAPHER: We're going off the 13 record at 9:05 a.m. 14 (Whereupon, a recess was taken.) 15 THE VIDEOGRAPHER: We're back on the 16 record at 9:18 a.m. 17 BY MR. ELSNER: 18 Q. Mr. Moffatt, have you read any 19 newspaper articles, magazine articles about the 20 opioid crisis in the United States? 21 A. I'm sure I have. I don't recall any 22 specifics. 23 Q. What generally do you recall? 24 MR. DELINSKY: Object to form.</p> |

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| <p style="text-align: right;">Page 66</p> <p>1 A. Just general news stories. 2 BY MR. ELSNER: 3 Q. What sources of news? 4 MR. DELINSKY: Object to form. 5 A. So like 60 Minutes, that sort of 6 thing. 7 BY MR. ELSNER: 8 Q. Have you watched the 60 Minutes 9 episodes? 10 A. No, I have not. 11 Q. Have you read newspaper articles about 12 the 60 minutes episodes? 13 MR. DELINSKY: Object to form. 14 BY MR. ELSNER: 15 Q. Dealing with the opioid crisis? 16 MR. DELINSKY: Object to form. 17 A. Not that I recall, no. 18 BY MR. ELSNER: 19 Q. Do you get a newspaper at your house? 20 A. No, I don't. 21 Q. Do you get a newspaper at work? 22 A. No, I don't. 23 Q. Do you watch the news in the evening? 24 A. No, I don't.</p> | <p style="text-align: right;">Page 68</p> <p>1 work, I instruct you to confer with me privately 2 about that before answering. 3 MR. ELSNER: I think that's an 4 improper instruction. 5 BY MR. ELSNER: 6 Q. Sir, have you read any congressional 7 testimony about the opioid crisis? 8 A. If I have, it would have been in the 9 context of attorney/client communications. 10 Q. Well, you can answer yes or no, and 11 then we can go to the next part. 12 Have you read such testimony? 13 A. I don't recall reading such testimony, 14 but if I have, it would have been in the context 15 of attorney/client communication. 16 Q. Okay. So if I understand it, you've 17 read no books, don't recall any newspaper 18 articles, have watched no news programs at all 19 about the opioid crisis in the United States? 20 MR. DELINSKY: Object to form. 21 A. I've seen information, but it would 22 largely be in connection with my role as a 23 corporate attorney. 24 BY MR. ELSNER:</p> |
| <p style="text-align: right;">Page 67</p> <p>1 Q. Have you read any books about the 2 opioid crisis in the United States? 3 A. No. 4 Q. Not a single one? 5 MR. DELINSKY: Object to form. 6 A. Not that I recall, no. I don't read 7 many books. I'm, you know, at work most of the 8 time. 9 BY MR. ELSNER: 10 Q. Have you read any congressional 11 testimony about the opioid crisis in the States? 12 MR. DELINSKY: Object to form. 13 Further object on privilege grounds to the 14 extent that -- 15 MR. ELSNER: It can't be privilege 16 whether he read congressional testimony. It 17 just can't be privileged if he read 18 congressional testimony. 19 MR. DELINSKY: Mr. Elsner, you're not 20 the arbiter of what privilege is or isn't, so if 21 I could finish my objection. It very well could 22 be. 23 To the extent that you reviewed 24 testimony in the context of attorney/client</p> | <p style="text-align: right;">Page 69</p> <p>1 Q. Have you attended any CLE programs 2 related to the DEA regulations? 3 A. I have attended CLE programs. I don't 4 recall specific topics. 5 Q. Have you -- are they in the field of 6 DEA regulations? 7 MR. DELINSKY: Object to form. Asked 8 and answered. 9 A. I have attended many over the years. 10 We have a CLE requirement for Rhode Island, but 11 I don't recall specific topics and specific 12 years that I would have. 13 BY MR. ELSNER: 14 Q. You don't -- do you select CLE 15 programs in your field of practice? 16 A. Typically they're in my field of 17 practice, but there are also CLE presentations 18 at work, there are ones that are online, so it 19 varies. 20 Q. Tell me about the ones that CVS shows 21 at work. What type of CLE programs does CVS 22 have internally? 23 MR. DELINSKY: Object to form. 24 A. They have a wide variety of programs.</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 Law firms come in and present on various topics. 2 BY MR. ELSNER: 3 Q. What law firms? 4 A. A wide variety of law firms. 5 Q. Give me some names. 6 A. I don't -- I'm not involved in setting 7 them up. There are others in the department 8 that set up the programs and say, there's a CLE 9 on attorney/client privilege, or something like 10 that, and whatever firm they set it up with. 11 But, yeah, it varies. 12 Q. Has there been a CLE on the 13 distribution or dispensing of opioids? 14 A. I don't recall. 15 Q. Has there been a CLE on the dispensing 16 or distribution of controlled substances? 17 A. Are you talking about at CVS or -- 18 Q. At CVS. 19 A. I don't recall. 20 Q. Who at CVS would set those up? 21 A. One of the other attorneys has an 22 administrative assistant that -- or a paralegal 23 that works with the firms to set up programs. 24 Q. Who is the attorney that selects what</p> | <p style="text-align: right;">Page 72</p> <p>1 attorney/client information that I would have 2 received, no. 3 Q. Well, let's break it down. 4 Have you ever seen such DEA 5 presentations? Just yes or no. 6 A. I don't recall seeing any DEA 7 presentations. 8 Q. Have you ever spoke with Joseph 9 Rannazzisi? 10 A. Not that I know of, no. 11 Q. Have you spoken with anyone at the DEA 12 about any of its investigations of CVS? 13 MR. DELINSKY: Object to form. 14 A. I've spoken to people at the DEA. I 15 don't believe I've ever spoken to them in the 16 context of an investigation. 17 BY MR. ELSNER: 18 Q. In what context? 19 A. Related to registrations. 20 Q. Registrations of what? 21 A. Either pharmacies or distribution 22 centers, in the context of acquisitions where 23 we're acquiring a large number of stores or 24 distribution centers and how we go about making</p> |
| <p style="text-align: right;">Page 71</p> <p>1 CLE programs will be shown at CVS? 2 MR. DELINSKY: Object to form. 3 A. It varies. Different attorneys would 4 set them up. 5 BY MR. ELSNER: 6 Q. Well, give me a couple names. 7 MR. DELINSKY: Object to form. 8 A. Typically it's -- it would be one of 9 the senior vice presidents in the legal 10 department, so Betsy Ferguson or Colleen 11 McIntosh would be two of the attorneys that 12 might have -- you know, firms would come to them 13 and say, we have a program on attorney/client 14 privilege, do you want us to do it at CVS. 15 BY MR. ELSNER: 16 Q. Have you attended any DEA 17 presentations? 18 MR. DELINSKY: Object to form. 19 A. Others at CVS have. I have not 20 personally. 21 BY MR. ELSNER: 22 Q. Have you ever seen any slides or 23 PowerPoint presentations prepared by the DEA? 24 A. Other than in the context of</p> | <p style="text-align: right;">Page 73</p> <p>1 the transition from the prior owner to CVS, 2 that's typically where I would interact with 3 people at the DEA. 4 Q. Who specifically, or what division of 5 the DEA would you interact with? 6 A. It would vary, but I believe they're 7 typically in the Office of Diversion Control. 8 Q. Do you know who? 9 A. It would have varied over the years. 10 I've been doing it for 21 years, so different 11 people at different times. I don't recall 12 anybody's name. 13 Q. What about in the 2010 through 2012 14 period? 15 MR. DELINSKY: Objection. Asked and 16 answered. 17 A. Well, we did acquisitions in that time 18 period, so I probably would have talked to them 19 sometime in that time period. 20 BY MR. ELSNER: 21 Q. Do you know any names? 22 A. I don't recall. It's a long time ago. 23 Q. I'm going to mark this next letter as 24 Exhibit 3.</p> |

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1 (Whereupon, CVS-Moffatt-3 was marked
2 for identification.)
3 BY MR. ELSNER:
4 Q. This is a letter from counsel to
5 plaintiffs in this litigation, and it's a list
6 of CVS custodians, and it says in the second
7 sentence that this "list identifies individuals
8 who we believe, based on our good-faith
9 investigation to date, are most likely to have
10 non-cumulative discoverable information relating
11 to the claims against the CVS defendants in the
12 Track One cases."
13 Do you see that?
14 A. Yes.
15 Q. Okay. And if you turn to the second
16 page under the fifteenth person, your name
17 appears there.
18 Do you see that?
19 A. Yes.
20 Q. What is your understanding of the
21 discoverable information that you have to offer
22 in this litigation?
23 MR. DELINSKY: Object to form.
24 And I'd state on the record that you

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1 left out the first sentence of the letter which
2 indicates that the list includes individuals
3 proposed by plaintiffs, and Mr. Moffatt's name
4 was proposed by the plaintiffs.
5 MR. ELSNER: Okay.
6 MR. DELINSKY: He was not identified
7 as a custodian by defense counsel who would have
8 relevant information.
9 MR. ELSNER: Okay.
10 BY MR. ELSNER:
11 Q. Do you have relevant information
12 concerning the claims and defenses in this
13 action?
14 MR. DELINSKY: Object to form.
15 And to the extent that calls on you to
16 provide attorney/client legal analysis, I
17 instruct you not to answer.
18 A. I wouldn't be the one making that
19 decision.
20 BY MR. ELSNER:
21 Q. Would you agree that CVS is among the
22 largest of the chain pharmacies in the United
23 States?
24 MR. DELINSKY: Object to form.

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1 A. Yes, we are.
2 BY MR. ELSNER:
3 Q. And you're the largest by store number
4 with more than 9,800 CVS pharmacies?
5 MR. DELINSKY: Object to form.
6 A. We're close to Walgreen's, so I'm not
7 exactly sure what Walgreen's store count is
8 these days. We are among the largest.
9 BY MR. ELSNER:
10 Q. Among the top two?
11 MR. DELINSKY: Object to form.
12 A. As far as I know, yes.
13 BY MR. ELSNER:
14 Q. Do you know how many pharmacies CVS
15 currently operates today in the United States?
16 MR. DELINSKY: Object to form.
17 A. Approximately 9,900.
18 BY MR. ELSNER:
19 Q. And you're also the largest by the
20 number of pharmacists, right? There are over
21 20,000 pharmacists for CVS?
22 MR. DELINSKY: Object to form.
23 A. I'm not familiar with the count of
24 pharmacists at, say, Walgreen's.

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1 MR. ELSNER: I'll mark this next
2 document as Exhibit 4.
3 (Whereupon, CVS-Moffatt-4 was marked
4 for identification.)
5 BY MR. ELSNER:
6 Q. This is Motley Rice 206. This is from
7 CVS's website.
8 Would you agree with me that CVS is
9 one of the largest pharmacists by prescriptions,
10 handling over 2.5 billion prescriptions, is that
11 right?
12 MR. DELINSKY: Object to form.
13 A. So it says here "2.5 billion
14 prescriptions managed or filled." That doesn't
15 mean we filled them necessarily. But I know
16 that we are one of the bigger pharmacies and,
17 therefore, fill more prescriptions than most
18 other pharmacies.
19 BY MR. ELSNER:
20 Q. And would you agree that CVS is one of
21 the largest pharmacies by revenue?
22 MR. DELINSKY: Object to form.
23 A. To my knowledge, yes.
24 BY MR. ELSNER:

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1 Q. And would it be accurate to say that
2 that revenue is close to \$60 billion in 2017?
3 MR. DELINSKY: Object to form.
4 A. I don't have the figures at hand, but
5 -- so I don't really know off the top of my
6 head. There are many people that work on the
7 financials for the company.
8 BY MR. ELSNER:
9 Q. Does that sound about right?
10 A. I really couldn't say.
11 (Whereupon, CVS-Moffatt-5 was marked
12 for identification.)
13 BY MR. ELSNER:
14 Q. Are we on Exhibit 5?
15 A. Yes.
16 Q. This is a map of the 9,800 pharmacies
17 that CVS has in the United States. Does it
18 appear accurate in terms of the majority of your
19 pharmacies on the East Coast, the midwest, and
20 in California?
21 MR. DELINSKY: Object to form.
22 A. So I'm not familiar with Red Lion,
23 where this came from, but it appears generally
24 accurate. I mean, I don't know that you'd call

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1 Texas midwest, there's a number of stores in
2 Texas, Arizona, so this looks generally like the
3 store map picture.
4 BY MR. ELSNER:
5 Q. And by midwest, I was referring to
6 sort of the Ohio area. And CVS has about 329
7 pharmacies in Ohio, is that right?
8 MR. DELINSKY: Object to form.
9 A. I don't recall the specifics of state
10 by state store count, but that sounds generally
11 accurate.
12 BY MR. ELSNER:
13 Q. If you look back at Exhibit 4 on the
14 third page, it has a drop-down on the website,
15 facts by state, and for Ohio the drop-down says
16 329 pharmacies. Does that sound about accurate?
17 MR. DELINSKY: Object to form.
18 A. I don't know when this was prepared,
19 so, you know, it could have changed a little
20 bit. But, you know, at the time that the
21 information was loaded it was accurate, but, you
22 know, we opened new stores, we closed stores.
23 BY MR. ELSNER:
24 Q. Sure.

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1 A. Pretty consistently.
2 Q. It's generally accurate?
3 A. Yes.
4 Q. And what is CVS's market share in the
5 country?
6 MR. DELINSKY: Object to form.
7 Mr. Moffatt, to the extent that that
8 calls for information you've obtained in
9 attorney/client context, I instruct you not to
10 answer.
11 A. Well, it would depend on what product
12 you're talking about and so forth. There are
13 other people at CVS that would be more attuned
14 to what market share we have.
15 BY MR. ELSNER:
16 Q. I'm just describing the number of
17 pharmacies across the country. Would you say
18 that you have about 14 percent of the total
19 market share?
20 MR. DELINSKY: Object to form. Same
21 objection and instruction as to privilege.
22 A. I don't know what the market share is.
23 And again, it depends on what you're looking at,
24 whose statistics you're looking at. Others at

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1 CVS, you know, have responsibility -- well, they
2 would know more about market share than a
3 corporate attorney.
4 BY MR. ELSNER:
5 Q. What about in Ohio, do you know what
6 the market share is that CVS has in Ohio?
7 A. Others at CVS would know that
8 information. I don't.
9 Q. There are roughly 70 CVS stores in
10 Summit County and Cuyahoga County. Does that
11 sound accurate to you?
12 A. I have no basis for knowing how many
13 stores are in specific counties.
14 Q. Are you aware that the Summit and
15 Cuyahoga Counties are -- sorry, strike that.
16 Are you aware that CVS stores in
17 Summit and Cuyahoga County were provided
18 controlled substances from the Indiana
19 distribution center?
20 MR. DELINSKY: Object to form.
21 A. Others at CVS would be responsible for
22 which distribution centers distribute to which
23 stores. I'm not responsible for that, and I
24 don't have any information of my own.

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1 BY MR. ELSNER:
 2 Q. So as the president of CVS Indiana,
 3 you don't know what states that distribution
 4 center distributes controlled substances to, is
 5 that right?
 6 MR. DELINSKY: Object to form.
 7 A. Others at CVS would be responsible for
 8 that information. It's -- in connection with my
 9 licensing responsibility, I know that it has
 10 licenses in a number of states.
 11 BY MR. ELSNER:
 12 Q. Have you read the complaint in this
 13 case?
 14 MR. DELINSKY: Object to form.
 15 A. In connection with preparing for this,
 16 I probably was given it at some point. I don't
 17 recall seeing it.
 18 BY MR. ELSNER:
 19 Q. Well, did you read it?
 20 MR. DELINSKY: Object to form. Asked
 21 and answered.
 22 A. Again, in connection with preparing --
 23 either preparing for the case, or I think I
 24 might have provided a declaration or an

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1 affidavit, so I may have read it back then, but
 2 I don't recall specifics about the complaint.
 3 BY MR. ELSNER:
 4 Q. But you did provide a declaration. In
 5 preparing the declaration, did you read the
 6 complaint?
 7 MR. DELINSKY: Object to form. Asked
 8 and answered.
 9 A. I believe it would have been given to
 10 me by counsel. I don't recall. I signed a
 11 number of declarations, but typically I would be
 12 given the documents that I need in order to
 13 provide the declaration.
 14 BY MR. ELSNER:
 15 Q. Did you write the declaration?
 16 MR. DELINSKY: Object to form.
 17 To the extent that calls for the
 18 disclosure of attorney/client communications, I
 19 instruct you not to answer.
 20 A. It would have been purely
 21 attorney/client communications.
 22 BY MR. ELSNER:
 23 Q. What did you read to prepare your
 24 declaration? Did you read the declaration?

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1 A. Of course, I read the declaration.
 2 Q. What else did you read?
 3 A. I don't recall specifics. I'd have to
 4 see the declaration and then, you know, it
 5 would -- I'm not sure that I recall exactly what
 6 I read.
 7 Q. Do you understand that the allegations
 8 in this case is that there is an opioid crisis
 9 in Summit and Cuyahoga Counties?
 10 MR. DELINSKY: Object to form.
 11 A. I don't have any basis for that
 12 understanding.
 13 BY MR. ELSNER:
 14 Q. To prepare for the deposition, did you
 15 read any -- to prepare for the deposition, did
 16 you read any other depositions that have been
 17 taken in this case?
 18 A. I did not.
 19 Q. Did you read that, not just CVS
 20 depositions, any other depositions from Purdue,
 21 Cardinal, any other depositions?
 22 A. I don't recall reading any other
 23 depositions in this case.
 24 Q. Have you been provided any?

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1 A. I don't believe so, no.
 2 Q. What did you do to prepare for your
 3 deposition?
 4 A. Principally I met with our attorneys
 5 and --
 6 Q. For how long?
 7 A. -- both in-house counsel and out.
 8 Q. For how long did you meet, and over
 9 how many days?
 10 A. I don't really recall. We met a
 11 couple of different times because my deposition
 12 was originally scheduled earlier, so -- and I
 13 don't recall, I didn't keep track of how long
 14 meetings were or anything like that.
 15 Q. Did you review documents?
 16 A. I reviewed a handful of documents,
 17 yes.
 18 Q. What documents did you review?
 19 MR. DELINSKY: I instruct you not to
 20 answer that, and caution you to the extent you
 21 even recall an attorney/client --
 22 attorney/client privilege and attorney work
 23 product grounds.
 24 Mr. Elsner, if you would like to ask

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1 about particular documents, we'll take those
 2 questions as they come. But to the extent your
 3 question asks for a selection of documents
 4 that's selected by counsel, I instruct the
 5 witness not to answer.

6 MR. ELSNER: I don't think that's an
 7 appropriate objection, but I think it's one we
 8 need to resolve with the court.

9 BY MR. ELSNER:

10 Q. Did you discuss your deposition with
 11 anyone other than counsel?

12 A. No.

13 Q. Did you discuss your deposition with
 14 any other employees at CVS other than attorneys?

15 A. Other than attorneys, no. I let my
 16 boss know that I was going to be here today.

17 Q. What role, if any, did you play with
 18 respect to the suspicious order monitoring
 19 system at CVS?

20 MR. DELINSKY: Object to form.

21 A. Others at CVS were responsible for the
 22 systems. I didn't have any role in that. I'm
 23 an attorney.

24 BY MR. ELSNER:

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1 Q. At one point in time CVS had hired the
 2 Buzzeo Group to help it develop an algorithm for
 3 suspicious order monitoring system. Are you
 4 familiar with the Buzzeo Group?

5 A. I am familiar with Ron Buzzeo. Many,
 6 many years ago I communicated with him, but it's
 7 been quite a long time since I did any of that.

8 Q. What was the base -- what were you
 9 communicating with him about?

10 MR. DELINSKY: And I object to the
 11 extent that question calls for privileged
 12 information. To the extent it does, I instruct
 13 the witness not to answer. If you're not sure
 14 and you want to discuss it, we can discuss it.

15 A. I don't recall specifically what I
 16 might have talked to him about, but it would
 17 have been because I'm an attorney and he was a
 18 consultant.

19 BY MR. ELSNER:

20 Q. Did you negotiate the contract between
 21 CVS and the Buzzeo Group?

22 MR. DELINSKY: Object to form.

23 A. I don't recall any -- I don't even
 24 know if there was a contract. I don't recall if

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1 I was involved in the negotiation of it.

2 BY MR. ELSNER:

3 Q. Did it relate to the development of a
 4 suspicious order monitoring system at CVS, your
 5 conversations with Ron Buzzeo?

6 MR. DELINSKY: Object to form.

7 A. I don't recall what I would have
 8 talked to Mr. Buzzeo about.

9 BY MR. ELSNER:

10 Q. The Buzzeo Group's contract with CVS
 11 or the consulting services it offered to CVS
 12 were terminated in late 2012 or early 2013. Do
 13 you know why?

14 MR. DELINSKY: Object to the form of
 15 the question.

16 To the extent you're able to answer
 17 for the moment, let's keep it to a yes or no
 18 question. We'll take each question here in
 19 turn.

20 A. Well, I don't know anything about
 21 the -- I don't know that there was a contract or
 22 when it was terminated if it was terminated,
 23 that sort of thing. I don't recall anything
 24 about the contract.

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1 BY MR. ELSNER:

2 Q. You said you knew Ron Buzzeo, I may
 3 misquote you, it's not my intention, but from
 4 way back. What period of time did you first
 5 meet Ron Buzzeo?

6 MR. DELINSKY: Object to form.

7 A. It would have been sometime shortly
 8 after I got to CVS, so late 1990s, early 2000s.

9 BY MR. ELSNER:

10 Q. And was your meeting with him in
 11 relationship to him serving as a consultant to
 12 CVS?

13 MR. DELINSKY: Object to form.

14 A. As I recall, yes. And I don't know
 15 that I ever met him, I think I talked to him on
 16 the phone.

17 BY MR. ELSNER:

18 Q. Okay. And what's your best
 19 recollection of that discussion? And how many
 20 times did you talk to him on the phone?

21 MR. DELINSKY: Object to form.

22 A. It was 20 years ago. I really don't
 23 know.

24 BY MR. ELSNER:

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1 Q. Were you aware that CVS had hired the
2 Analysis Group to consult on its suspicious
3 order monitoring system?
4 A. Others at CVS would have been
5 responsible for that. I had no involvement in
6 it.
7 Q. Were you involved at all in
8 negotiating or drafting the contract between CVS
9 and the Analysis Group?
10 A. Others at CVS would have been
11 responsible for that. I don't believe I had any
12 role.
13 Q. Did anyone bring to your attention as
14 the president of CVS Indiana that there were
15 certain staffing issues in the monitoring of
16 suspicious orders of controlled substances at
17 CVS Indiana in 2012 and 2013?
18 MR. DELINSKY: Object to form.
19 A. Others at CVS were responsible for
20 operating the facility and for staffing, so I
21 was not involved in that. I was just a
22 corporate attorney.
23 BY MR. ELSNER:
24 Q. Were you aware as the president of CVS

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1 in Indiana that CVS Indiana was reviewing all
2 orders for controlled substances to determine
3 whether there was a suspicion of diversion?
4 MR. DELINSKY: Object to form.
5 A. Others at CVS were responsible for
6 operations, and I was not involved in that.
7 BY MR. ELSNER:
8 Q. So as the president of CVS Indiana, no
9 operational issues were brought to your
10 attention, is that right?
11 MR. DELINSKY: Object to the form of
12 the question.
13 A. Others at CVS were responsible for
14 operations. I was not involved in operations.
15 I'm not an operator.
16 BY MR. ELSNER:
17 Q. Did you have any conversations with
18 Mark Nicastro who was an employee of CVS
19 Indiana?
20 A. Not that I recall, no.
21 Q. Do you recall any conversations with
22 any employees of CVS Indiana distribution center
23 while you served as president of CVS Indiana?
24 MR. DELINSKY: Object to form.

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1 A. Any communications I would have had
2 would have been in my role as an attorney. I
3 don't recall specifics.
4 BY MR. ELSNER:
5 Q. Let's break it down.
6 Do you recall any conversations? And
7 we can deal with the privilege issue separately.
8 A. I believe I have talked to people at
9 the distribution center in my role as an
10 attorney.
11 Q. What people -- without disclosing the
12 conversation, what people at the CVS Indiana
13 distribution center did you communicate with?
14 A. I don't recall. It was many years ago
15 that we're talking about. We're talking about,
16 you know, pre-2014, so I don't really know.
17 Q. Did you ever speak with Gary Millikan?
18 A. I don't recall. I know the name, and
19 I probably have talked to Gary in the past,
20 either on conference calls or directly, I can't
21 recall. But it would have been, again, in my
22 role as an attorney.
23 Q. Aaron Burtner, did you ever have any
24 conversations with Aaron Burtner?

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1 A. I'm not familiar with that name.
2 MR. ELSNER: Mark this as Exhibit 6.
3 (Whereupon, CVS-Moffatt-6 was marked
4 for identification.)
5 BY MR. ELSNER:
6 Q. Mr. Moffatt, this is the DEA's Drug
7 Fact Sheet for hydrocodone. Hydrocodone was one
8 of the drugs that the Indiana distribution
9 center distributed to CVS stores in Summit and
10 Cuyahoga County.
11 Are you familiar with the fact that
12 CVS distributed hydrocodone?
13 MR. DELINSKY: Object to form.
14 A. Others were responsible for what
15 distribution centers distributed what drugs, and
16 I'm not familiar with it.
17 BY MR. ELSNER:
18 Q. Okay. This says, if you read it in
19 the Overview with me here, that "Hydrocodone is
20 the most frequently prescribed opioid in the
21 United States and is associated with more drug
22 abuse and diversion than any other...illicit
23 opioid."
24 Were you aware of that?

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1 MR. DELINSKY: Object to form.
 2 A. Well, it says "licit or illicit."
 3 BY MR. ELSNER:
 4 Q. Licit or illicit, that's right.
 5 A. I'm not familiar with this document at
 6 all, so I was not familiar until reading it just
 7 now.
 8 Q. Are you aware that hydrocodone is the
 9 most frequently prescribed opioid in the United
 10 States?
 11 A. That's what it says here. I'm not
 12 familiar with what drugs are prescribed. Others
 13 at CVS would be more knowledgeable about that.
 14 Q. Did you know in certain years the
 15 dispensing of hydrocodone was more than double
 16 that of Lipitor in the United States?
 17 MR. DELINSKY: Object to form.
 18 A. Others at CVS are knowledgeable about
 19 the prescribing of drugs. That's not in my
 20 area.
 21 BY MR. ELSNER:
 22 Q. As the president of CVS Indiana, do
 23 you know whether hydrocodone was the highest
 24 drug distributed from CVS Indiana?

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1 MR. DELINSKY: Object to form.
 2 A. Others at CVS would know about what
 3 drugs were distributed from what distribution
 4 centers. It's not in my area.
 5 BY MR. ELSNER:
 6 Q. Were you aware that hydrocodone was
 7 the subject of more drug abuse and diversion
 8 than any other licit or illicit opioid?
 9 MR. DELINSKY: Object to form.
 10 A. Others at CVS were responsible for
 11 that sort of thing. It's not in my area.
 12 BY MR. ELSNER:
 13 Q. Did it concern you as the president of
 14 CVS Indiana that you were distributing
 15 hydrocodone and that it was the subject of such
 16 abuse?
 17 MR. DELINSKY: Object to form.
 18 A. Others at CVS were responsible for
 19 this, and I don't have any basis for what you're
 20 saying in your question.
 21 BY MR. ELSNER:
 22 Q. So it didn't concern you one way or
 23 the other?
 24 MR. DELINSKY: Object to form.

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1 A. Others at CVS would be responsible for
 2 those areas.
 3 BY MR. ELSNER:
 4 Q. And it didn't concern you?
 5 MR. DELINSKY: Object to form.
 6 A. Others at CVS were responsible for
 7 that.
 8 BY MR. ELSNER:
 9 Q. Well, they may have been, but did it
 10 concern you?
 11 MR. DELINSKY: Object to form.
 12 A. Others at CVS were responsible, so I
 13 was not involved in that, and so it was not --
 14 it would not have been one of my concerns.
 15 MR. ELSNER: I'm going to mark this
 16 next document as Exhibit 7.
 17 (Whereupon, CVS-Moffatt-7 was marked
 18 for identification.)
 19 BY MR. ELSNER:
 20 Q. Mr. Moffatt, this is an e-mail from
 21 Dan Gillen, who is with the DEA, and it's an
 22 e-mail he sent to Mark Nicastro on November 25,
 23 2013, and it's in the context of the DEA's audit
 24 and investigation of CVS Indiana at the time you

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1 were the president of CVS Indiana.
 2 Were you aware that the DEA was
 3 conducting an audit of CVS Indiana in 2013?
 4 MR. DELINSKY: Object to form.
 5 A. Others at CVS would have been
 6 responsible for DEA investigations. I was not
 7 involved in the investigation. To the extent I
 8 knew anything, it would have been through
 9 attorney communications.
 10 BY MR. ELSNER:
 11 Q. Well, as the president of CVS Indiana,
 12 were you made aware of the audit in that
 13 capacity?
 14 MR. DELINSKY: Object to form.
 15 A. Any communications would have been
 16 because I'm a lawyer, not because I'm president
 17 of CVS Indiana.
 18 BY MR. ELSNER:
 19 Q. So there would have been no alerts to
 20 you as president of CVS Indiana if the DEA was
 21 conducting an audit?
 22 MR. DELINSKY: Object to form.
 23 A. Others at CVS would have been
 24 responsible for the audit and for the

| | |
|--|---|
| <p style="text-align: right;">Page 98</p> <p>1 investigation, so I was not informed other than 2 in my capacity as a lawyer. 3 BY MR. ELSNER: 4 Q. There were no meetings of CVS Indiana 5 or discussions in CVS Indiana about this audit 6 that you participated -- sorry, strike that 7 question. 8 Were there any meetings among members 9 of CVS Indiana concerning the DEA audit? 10 MR. DELINSKY: Object to form. 11 A. I would not have been involved in the 12 investigation or in any meetings. Meetings 13 would have taken place between other counsel and 14 individuals at the distribution center who are 15 CVS Indiana employees, and so CVS Indiana 16 employees would have been involved, but I was 17 not involved. 18 BY MR. ELSNER: 19 Q. Okay. This e-mail concerns two 20 different stores. It concerns one store -- 21 these are both stores in Indiana, and it says in 22 the first paragraph that "CVS Store 06880 23 ordered 1,888,600 dosage units of hydrocodone 24 between January 1, 2012 and October 2013. Of</p> | <p style="text-align: right;">Page 100</p> <p>1 Q. You would have been made aware of it, 2 or you were made aware of it? 3 MR. DELINSKY: Object to form. 4 A. To the extent -- yeah, to the extent I 5 was made aware of it, it would have been because 6 I'm an attorney. 7 BY MR. ELSNER: 8 Q. Were you aware that one of the 9 concerns that the DEA had were -- strike that. 10 Would you agree that shipping roughly 11 2 million dosage units of hydrocodone to a town 12 for a -- to a CVS Pharmacy in a town of 13 18,000 people is potential evidence of 14 diversion? 15 MR. DELINSKY: Object to form. 16 A. I don't know anything about this 17 particular store. I'd need to know a lot more 18 about the context, what the volume of the store 19 is. There can be very large stores in towns 20 that have small populations, if it's on a major 21 thoroughfare, so I don't know anything about 22 this particular store. We have many stores. 23 BY MR. ELSNER: 24 Q. Did CVS ever conduct an investigation</p> |
| <p style="text-align: right;">Page 99</p> <p>1 which 1,766,000 tablets of hydrocodone were 2 shipped from your facility." That's the CVS 3 distribution center in Indiana. And that the 4 pharmacy is located in a town in Indiana with 5 approximately 18,000 people. 6 Were you aware of that? 7 MR. DELINSKY: Object to form. 8 A. I can see that that's what the e-mail 9 says. Others would have been involved in the 10 investigation and the audit. I was not 11 involved. 12 BY MR. ELSNER: 13 Q. Were you aware that the DEA was 14 concerned about large shipments of hydrocodone 15 into towns with very small populations? 16 MR. DELINSKY: Object to form. 17 A. To the extent I was aware of that, it 18 would have been in connection with my role as an 19 attorney, so through attorney communications. 20 BY MR. ELSNER: 21 Q. You were not made aware of this as the 22 president of CVS Indiana? 23 A. I would have been made aware of it in 24 my role as an attorney.</p> | <p style="text-align: right;">Page 101</p> <p>1 of this particular store to determine why it was 2 receiving roughly 2 million units of 3 hydrocodone? 4 MR. DELINSKY: Object to the form of 5 the question. Further object to the extent that 6 that question calls on you to provide 7 information you learned in the course of 8 attorney/client privilege. 9 A. Any information about what I would 10 have learned about this would have been in my 11 role as an attorney. 12 MR. ELSNER: Why don't we take a quick 13 break. Go off the record for a minute. 14 THE VIDEOGRAPHER: We're going off the 15 record at 9:58 a.m. 16 (Whereupon, a recess was taken.) 17 THE VIDEOGRAPHER: We're back on the 18 record at 10:10 a.m. 19 BY MR. ELSNER: 20 Q. Mr. Moffatt, I'm going to show you 21 Exhibit 8. 22 (Whereupon, CVS-Moffatt-8 was marked 23 for identification.) 24 BY MR. ELSNER:</p> |

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1 Q. This is an e-mail from Mark Nicastro
2 to William Jusko.
3 Do you know who Mark Nicastro is?
4 A. I know that he's at the Indiana
5 distribution center based on prior questions.
6 Q. But you otherwise didn't know he was
7 the director of the CVS distribution center in
8 Indiana?
9 A. I'm familiar with the name. I'm not
10 familiar with what roles he's played.
11 Q. This e-mail relates to a meeting at
12 the conclusion of the DEA audit that began in
13 2013, and this -- the subject of this is the
14 "DEA closing audit." Do you see that in the
15 subject line?
16 A. Yes, yes, I see that.
17 Q. Okay. And then it reads in the first
18 sentence "DEA investigators Dan Gillen and
19 Andrew Ratcliffe set up our closing meeting for
20 today with Betsy Ferguson. Betsy was here as
21 well as Pam Hinkle."
22 Did I read that correctly?
23 A. Yes, you did.
24 Q. Have you ever met Dan Gillen?

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1 A. I have not.
2 Q. Do you understand that he was a DEA
3 investigator? Did you know that before seeing
4 this document?
5 MR. DELINSKY: Object to form.
6 A. I believe he's -- the prior e-mail,
7 but I'm not familiar with Mr. Gillen.
8 BY MR. ELSNER:
9 Q. So before today you didn't know the
10 name?
11 A. No. Others at CVS would have been
12 involved in government investigations and so
13 forth.
14 Q. Do you know that -- if you see under
15 "Number 5" there, which is in the sort of middle
16 of the page, the very first line says "Failure
17 to maintain an SOM program."
18 Were you aware that the DEA believed
19 that CVS did not maintain a suspicious order
20 monitoring program?
21 MR. DELINSKY: Object to form.
22 A. Others at CVS were responsible for
23 operations and compliance.
24 BY MR. ELSNER:

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1 Q. So you were aware or not aware?
2 A. Others at CVS were responsible for it.
3 Q. Yeah, but were you aware?
4 A. Until I read this document -- others
5 at CVS would have been involved in this. I was
6 not involved.
7 Q. So you were not involved, which means
8 you were not aware, is that right?
9 MR. DELINSKY: Object to form. Asked
10 and answered.
11 A. To the extent I was aware of any of
12 this, it would have been in my role as an
13 attorney.
14 BY MR. ELSNER:
15 Q. Well, as president of CVS Indiana, no
16 one brought it to your attention that the DEA
17 believed that CVS in Indiana failed to maintain
18 a suspicious monitoring program, is that right?
19 MR. DELINSKY: Object to form.
20 Objection, asked and answered.
21 A. Others at CVS would have been
22 responsible for this sort of thing. And to the
23 extent I was aware of it, it would have been in
24 my role as an attorney.

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1 BY MR. ELSNER:
2 Q. My question is simply whether you were
3 aware, yes or no.
4 MR. DELINSKY: Object.
5 BY MR. ELSNER:
6 Q. Others may be aware, but I'm asking
7 whether you were aware.
8 MR. DELINSKY: Object to form. Asked
9 and answered.
10 A. Others would have been aware. To the
11 extent I was aware, it would have been in my
12 role as an attorney. I don't have a specific
13 recollection of this.
14 BY MR. ELSNER:
15 Q. As the head of the licensing division
16 for CVS, were you aware that the DEA believed
17 that CVS did not have a suspicious order
18 monitoring program in 2014?
19 MR. DELINSKY: Object to form.
20 A. Others at CVS would have been
21 responsible for that sort of thing. Again, we
22 didn't have a division, a department, or
23 subdepartment for licensing, but others would
24 have been responsible for that.

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1 BY MR. ELSNER:

2 Q. But as the head of that division, you
3 were not aware of that, is that right?

4 MR. DELINSKY: Object to form.

5 A. To the extent I was aware of it, it
6 would have been in my role as an attorney.

7 BY MR. ELSNER:

8 Q. As the president of CVS Indiana, you
9 were required to sign certain documents
10 concerning licenses for CVS Indiana, is that
11 right?

12 MR. DELINSKY: Object to form.

13 A. So others typically sign -- it depends
14 on the time frame. But others typically sign
15 documents related to licensing, so my licensing
16 director or the licensing managers. It's been
17 delegated.

18 BY MR. ELSNER:

19 Q. What documents did you have to execute
20 as the president of CVS Indiana, if any?

21 A. I don't recall specifics. I sign
22 hundreds of documents.

23 Q. Well, as the president of CVS Indiana,
24 did you ever verify whether there was a system

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1 in place at CVS Indiana to monitor for
2 suspicious activities dealing with the
3 distribution of controlled substances?

4 MR. DELINSKY: Object to form.

5 A. Others at CVS were responsible for
6 operations and compliance.

7 BY MR. ELSNER:

8 Q. And you don't know one way or another
9 whether they complied or didn't comply, is that
10 right?

11 MR. DELINSKY: Object to form.

12 A. Others at CVS were responsible for
13 that.

14 BY MR. ELSNER:

15 Q. And you didn't make a point to find
16 out one way or the other as the president of CVS
17 Indiana, is that right?

18 MR. DELINSKY: Object to form.

19 A. Others were responsible for it.

20 BY MR. ELSNER:

21 Q. And so you didn't do anything, is that
22 right?

23 MR. DELINSKY: Object to form.

24 A. Others were responsible.

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1 BY MR. ELSNER:

2 Q. So it was not your role, is that
3 right?

4 MR. DELINSKY: Object to form.

5 A. Others were responsible for that, that
6 type of activity.

7 BY MR. ELSNER:

8 Q. What did you do as the president of
9 CVS Indiana?

10 MR. DELINSKY: Object to form. Asked
11 and answered.

12 A. My role was largely administrative.

13 BY MR. ELSNER:

14 Q. And to do what?

15 A. Sign documents.

16 Q. What documents?

17 MR. DELINSKY: Objection. Asked and
18 answered.

19 A. I signed many, many documents for a
20 number of our entities. I don't recall
21 specifics as to what I signed for a specific
22 entity.

23 BY MR. ELSNER:

24 Q. Well, you knew you were being deposed

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1 today, and you knew you were being deposed with
2 your role with respect to being the president of
3 CVS Indiana which is a defendant in this action,
4 right?

5 A. Yes.

6 Q. Did you take any steps to look through
7 the documents or the things you executed as the
8 president of CVS Indiana in the relevant time
9 period to prepare for today's deposition?

10 MR. DELINSKY: Object to form.

11 A. I don't know what documents I signed
12 on behalf of CVS Indiana.

13 BY MR. ELSNER:

14 Q. And to come here today for your
15 deposition you didn't make any effort to
16 determine that, is that right?

17 MR. DELINSKY: Object to form.

18 A. I wasn't involved in the collection of
19 documents or anything like that, so I did not
20 myself go looking through files.

21 BY MR. ELSNER:

22 Q. You, to prepare for today's
23 deposition, you didn't go back and look at the
24 documents you executed in the relevant time

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1 period related to this lawsuit while you served
2 as the president of CVS Indiana, is that right?
3 MR. DELINSKY: Object to form.
4 Further object to the insinuation that a fact
5 witness has a duty to review his old files in
6 preparation for a deposition. There's no such
7 duty.
8 MR. ELSNER: Objection. You can
9 object on form or privilege. You can't give
10 speaking objections, you know that.
11 A. So I signed thousands of documents
12 during the time period we're talking about. I
13 did not go back to try to find what specific
14 documents I signed for any specific entity.
15 BY MR. ELSNER:
16 Q. Did you understand that this testimony
17 today and this lawsuit is important?
18 MR. DELINSKY: Object to form.
19 A. I understand it's important. I don't
20 know the relevance of me going back to look at
21 files from many, many years ago to try to find
22 documents that I don't even know if they exist.
23 BY MR. ELSNER:
24 Q. One of your roles as president of CVS

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1 Indiana was to make sure that the distribution
2 center maintained its license with the DEA, its
3 registration to distribute controlled
4 substances, right?
5 MR. DELINSKY: Object to form.
6 A. Could you repeat that?
7 MR. ELSNER: Could you read it back?
8 (Whereupon, the reporter read back the
9 pending question.)
10 MR. DELINSKY: Object to form.
11 A. So a number of people were responsible
12 for maintaining the licenses of the facility. I
13 don't think it was my role. It was certainly
14 not my role individually.
15 BY MR. ELSNER:
16 Q. Well, you were the president. There's
17 no one higher than you at CVS Indiana, right?
18 MR. DELINSKY: Object to form.
19 Misstates testimony.
20 A. My role as president was
21 administrative. There were other people that
22 were operating the facility.
23 BY MR. ELSNER:
24 Q. Did you think it was important for CVS

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1 Indiana to maintain its license as the president
2 of that entity?
3 MR. DELINSKY: Object to form.
4 A. Others are responsible for operations.
5 It's important for each of our facilities to be
6 properly licensed.
7 BY MR. ELSNER:
8 Q. Did you think it was important that
9 each facility is properly licensed, including
10 CVS Indiana as its president?
11 MR. DELINSKY: Object to form.
12 A. So other people are involved in the
13 operations of all the facilities. They have
14 responsibility, and I believe that it's
15 important that we maintain proper licenses.
16 BY MR. ELSNER:
17 Q. What steps did you take, if any, to
18 ensure that CVS Indiana was taking the
19 appropriate steps to maintain its license?
20 MR. DELINSKY: Object to form.
21 A. I don't recall anything specific with
22 regard to CVS Indiana.
23 BY MR. ELSNER:
24 Q. If you look back at the exhibit we

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1 were just looking at, we were discussing under
2 Number 5 "Failure to maintain an SOM program."
3 It then reads that "Dan Gillen recited the exact
4 same thing he has been saying since day one.
5 They see a lot of pills going through CVS in
6 small towns and it has to be excessive, yet he
7 has never seen a report cross his desk from CVS
8 about a suspicious order in the three years he
9 has been here."
10 Were you aware that CVS Indiana had
11 never distributed, or never sent the DEA a
12 suspicious order report related to its
13 distribution of controlled substances?
14 MR. DELINSKY: Object to form.
15 A. Others at CVS would be responsible for
16 that. I was not aware.
17 BY MR. ELSNER:
18 Q. Then it reads "Betsy did the talking
19 and was very professional and friendly." And
20 then it says "Dan finally pushed Betsy's button
21 and the gloves came off."
22 Who is Betsy Ferguson?
23 A. Betsy is a senior vice president and
24 deputy general counsel at CVS.

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1 Q. What does it mean that the "gloves
 2 came off"?

3 A. I have no context for this. I was not
 4 at the meeting. I don't know.

5 Q. If you go down to the next paragraph,
 6 the one beginning "Betsy made it very clear," do
 7 you see where I'm at? "Betsy made it very clear
 8 that a letter of Admonishment is one thing."

9 A. I see that.

10 Q. Okay. It says "Betsy made it very
 11 clear that a letter of Admonishment is one
 12 thing. Anything other than that and she wanted
 13 an opportunity to do a presentation to his boss"
 14 -- Dan Gillen's boss -- "and her boss about what
 15 we do with SOM."

16 Do you see that?

17 A. I see that sentence.

18 Q. Okay. And then after that it says
 19 "Anything more than a letter and we would meet
 20 in DC in the courts just like Walgreen's did."

21 Do you see that?

22 A. I see that sentence, yes.

23 Q. Were you aware that Betsy Ferguson was
 24 threatening the DEA that if they sent anything

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1 other than an admonishment letter that they
 2 would see the DEA in court just like Walgreen's
 3 did?

4 MR. DELINSKY: Object to form.

5 A. I have no context for any of this. I
 6 wasn't at the meeting.

7 BY MR. ELSNER:

8 Q. Did you know --

9 A. I don't know anything about it.

10 Q. Did you know that Betsy Ferguson was
 11 threatening the DEA agent that if he did
 12 anything other than send a letter of
 13 admonishment that she'd request a meeting with
 14 his boss?

15 MR. DELINSKY: Object to form.

16 Further object to the extent that this question
 17 calls for you to disclose attorney/client
 18 communications. If it does, I instruct you not
 19 to answer.

20 A. I don't know anything about this
 21 meeting. That's your characterization based on
 22 a third party's write-up of this. I don't have
 23 any basis to say that Betsy did anything
 24 threatening.

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1 BY MR. ELSNER:

2 Q. Were you aware that Walgreen's had
 3 sued the DEA?

4 MR. DELINSKY: Object to form.

5 Objection to the extent it calls for
 6 attorney/client privileged information. To the
 7 extent it does, I instruct you not to answer.

8 MR. ELSNER: It can't be

9 attorney/client privilege if he's aware that
 10 Walgreen's brought an action against the DEA.
 11 That can't disclose a privilege.

12 A. To the extent I'm aware of it, it was
 13 through attorney communications.

14 BY MR. ELSNER:

15 Q. Are you aware that Walgreen's brought
 16 an action against the DEA? Do you know what
 17 Betsy Ferguson is referring to here?

18 A. This is a long time ago. It's Betsy's
 19 area, it's not mine, and to the extent I was
 20 aware of it, it was through communications that
 21 she would have sent to me as an attorney.

22 Q. It read that "Apparently Walgreen's
 23 took action against the DEA for not properly
 24 administering their own SOM regulations."

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1 Were you aware that Walgreen's had
 2 taken that action?

3 MR. DELINSKY: Object to form.

4 Objection, asked and answered.

5 A. Again, it's Mr. Nicastro's
 6 characterization. I don't know, and it's not my
 7 area, so I don't recall anything specific about
 8 the Walgreen's matter.

9 BY MR. ELSNER:

10 Q. It then reads that -- and this is
 11 Betsy Ferguson again -- "She was very pointed
 12 about why the DCs" -- 'the distribution
 13 centers -- "shouldn't see many suspicious orders
 14 because of all the preemptive work that is done
 15 at the pharmacy, pharmacy ops, interviewing
 16 doctors, etcetera."

17 Is it CVS's position that the
 18 pharmacies at CVS were doing such extraordinary
 19 work that it wouldn't result in any suspicious
 20 orders?

21 MR. DELINSKY: Object to form.

22 A. This is again Mr. Nicastro's
 23 characterization of a meeting that I wasn't at,
 24 and I'm not able to form an opinion about it.

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1 BY MR. ELSNER:

2 Q. Well, as the president of CVS in
3 Indiana, would you agree that you wouldn't see
4 suspicious orders because of all the preemptive
5 work undertaken at the pharmacies?

6 MR. DELINSKY: Object to form.

7 A. Any information I would have about
8 this sort of thing would have come to me as a
9 result of my being an attorney, not as my -- as
10 a result of me being president. I am aware that
11 we take a lot of measures at the store. I don't
12 know anything about how it would impact
13 suspicious orders.

14 BY MR. ELSNER:

15 Q. Does it concern you as the president
16 of CVS in Indiana that there were no suspicious
17 orders reported to the DEA concerning
18 distribution of controlled substances from the
19 Indiana distribution center?

20 MR. DELINSKY: Object to form.

21 A. It's not my area, so I don't know what
22 reports may have been issued. This particular
23 e-mail talks about it not coming across his
24 desk. It could have been submitted somewhere

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1 else for all I know. But it's not my area.
2 Other people at CVS are responsible for this
3 activity.

4 BY MR. ELSNER:

5 Q. So it didn't concern you as the
6 president of CVS in Indiana that they had never
7 reported a suspicious order to the DEA?

8 MR. DELINSKY: Object to form.

9 A. Others at CVS were responsible for
10 operations and compliance.

11 BY MR. ELSNER:

12 Q. And so it didn't matter to you?

13 MR. DELINSKY: Object to the form.

14 A. Others at CVS were responsible for
15 that activity.

16 BY MR. ELSNER:

17 Q. I know. But did it matter to you or
18 not?

19 MR. DELINSKY: Object to form.

20 A. Others at CVS were responsible.

21 BY MR. ELSNER:

22 Q. Did it matter to you?

23 MR. DELINSKY: Object to form.

24 BY MR. ELSNER:

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1 Q. I'm asking you a different question
2 than what you're answering, and I'm entitled to
3 an answer to the question I asked.

4 A. I -- my --

5 Q. You can give your colloquy, but you've
6 got to end it with yes, it did, or no, it
7 didn't.

8 MR. DELINSKY: Object to form.

9 Mr. Moffatt, you answer the questions
10 as you see proper.

11 A. My answer is that others were
12 responsible for that activity.

13 BY MR. ELSNER:

14 Q. And so how did you feel about it?

15 MR. DELINSKY: Object to form.

16 A. I don't have an answer beyond the
17 other people's being responsible.

18 BY MR. ELSNER:

19 Q. So you had no feeling one way or the
20 other?

21 MR. DELINSKY: Object to form.

22 A. Other people were responsible.

23 MR. ELSNER: I think that this is
24 totally improper coaching of a witness. I'm

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1 entitled to answers to these questions, and he's
2 been coached to repeat the same phrase back to
3 me and not answer any of the questions that I'm
4 asking him. I think it's totally improper, and
5 it's obstructive.

6 MR. DELINSKY: Your questions are
7 completely and totally improper. We've spent
8 the last hour on documents that Mr. Moffatt has
9 testified plainly that he has never seen before
10 concerning events that he has testified he is
11 not familiar with. You've continued to ask
12 question after question on these topics. That
13 is what's improper about this line of questions.

14 MR. ELSNER: It's not improper because
15 he's the president of the entity, and I'm
16 entitled to ask him whether he's been made aware
17 of these activities, and if he has a view about
18 them. It's totally proper.

19 MR. DELINSKY: But his role as
20 president of the entity is an administrative
21 role only. All operations are led and managed
22 by other persons, as he has testified. It is
23 improper.

24 MR. ELSNER: Mark this next document

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| <p style="text-align: right;">Page 122</p> <p>1 as Exhibit 9. 2 (Whereupon, CVS-Moffatt-9 was marked 3 for identification.) 4 BY MR. ELSNER: 5 Q. Mr. Moffatt, prior to receiving this 6 letter from the DEA, which is the final closing 7 letter of the DEA audit of the Indianapolis 8 distribution center of which you were the 9 president of, was there any discussion with you 10 about the potential that the DEA may suspend the 11 license to distribute controlled substances at 12 CVS Indiana? 13 MR. DELINSKY: Object to form. 14 A. Others were responsible for operating 15 the facility. And to the extent I was made 16 aware of anything, it would have been in my role 17 as an attorney, not as president. 18 BY MR. ELSNER: 19 Q. Were you aware, sir, that the DEA had 20 determined that CVS failed to design and 21 maintain a system to detect suspicious and 22 report suspicious orders for Schedule III 23 through V controlled substances? 24 MR. DELINSKY: Object to form.</p> | <p style="text-align: right;">Page 124</p> <p>1 A. To the extent I was made aware of it, 2 it would have been in my role as an attorney. 3 BY MR. ELSNER: 4 Q. I'd like to understand a little bit 5 about the process of purchasing controlled 6 substances at CVS. 7 CVS pharmacies fill prescriptions for 8 opioids, including OxyContin, oxycodone, 9 hydrocodone combination products, is that right? 10 MR. DELINSKY: Object to form. 11 A. Others at CVS are responsible for 12 pharmacy purchasing. I'm not involved in that 13 process. 14 BY MR. ELSNER: 15 Q. Do you know that that's what they 16 dispense? 17 MR. DELINSKY: Object to form. 18 A. Others at CVS are responsible for 19 that, and I'm aware we dispense thousands of 20 drugs. 21 BY MR. ELSNER: 22 Q. Right. Including opioids, right? 23 MR. DELINSKY: Object to form. 24 A. Others are more knowledgeable about</p> |
| <p style="text-align: right;">Page 123</p> <p>1 A. I'm reading this now for the first 2 time. That appears to be the allegation in 3 paragraph number 1. 4 BY MR. ELSNER: 5 Q. Okay. And so as president of CVS in 6 Indiana, you never saw this letter, nor did you 7 know about this finding, is that right? 8 MR. DELINSKY: Object to form. 9 A. The letter is addressed to Betsy 10 Ferguson, and so I was not -- to the extent I 11 was made aware of it, it was because I'm an 12 attorney, not because I'm president. 13 BY MR. ELSNER: 14 Q. Well, it's addressed to CVS Indiana, 15 care of Betsy Ferguson, correct? 16 A. Yeah, and it says "Dear Ms. Ferguson" 17 as well. 18 Q. But it's to CVS Indiana, right? 19 A. The first line is "CVS Indiana." 20 Q. Were you made aware -- so you were not 21 made aware of the letter with respect to your 22 role overseeing the licensing component of CVS's 23 business, is that right? 24 MR. DELINSKY: Object to form.</p> | <p style="text-align: right;">Page 125</p> <p>1 this, but generally speaking, I'm aware that 2 opioids are among the drugs that we dispense. 3 BY MR. ELSNER: 4 Q. Do all CVS pharmacies dispense 5 opioids, or only certain ones? 6 MR. DELINSKY: Object to form. 7 A. We have a handful of stores that don't 8 have pharmacies at all. I believe that the ones 9 that have pharmacies -- I don't know -- I don't 10 have particular information about what 11 prescriptions are filled at what pharmacies, so 12 others in pharmacy operations would have 13 information about that. 14 BY MR. ELSNER: 15 Q. You're the president of various 16 pharmacy entities, is that right? 17 A. Yes, that's correct. 18 Q. And so for those pharmacies, are you 19 aware whether they dispense opioids? 20 MR. DELINSKY: Object to form. 21 A. Others in pharmacy operations are more 22 versed in what stores fill what prescriptions. 23 To the extent anybody gives me information, it's 24 in my role as an attorney as opposed to in my</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 role as president of one of the store 2 subsidiaries. 3 BY MR. ELSNER: 4 Q. Is the fact that a CVS dispenses an 5 opioid a privilege issue? Are you asserting 6 privilege over whether you dispense opioids or 7 not? 8 MR. DELINSKY: Object to form. 9 You don't need to -- that question 10 should be directed to -- 11 BY MR. ELSNER: 12 Q. You're the president of certain CVS 13 pharmacies. Do all those pharmacies dispense 14 opioids? Yes or no. 15 MR. DELINSKY: He's already answered 16 the question, Mike. Asked and answered. 17 A. People in pharmacy operations know 18 better than I do which pharmacies dispense which 19 drugs. That's not part of my role as a 20 corporate attorney. 21 BY MR. ELSNER: 22 Q. I know. But I can't find the most 23 knowledgeable person on every single thing at 24 CVS to answer questions or this discovery period</p> | <p style="text-align: right;">Page 128</p> <p>1 pharmacy purchasing. To the extent we carried 2 any Schedule IIs, those would have come from, 3 from my understanding, wholesalers. 4 BY MR. ELSNER: 5 Q. Wholesalers? 6 A. Not from our distribution centers. 7 Q. Correct. 8 But would CVS ever purchase those 9 products directly from the manufacturer as 10 opposed to a wholesaler like Cardinal or 11 McKesson? 12 MR. DELINSKY: Object to form. 13 A. Others at CVS are responsible for 14 pharmacy purchasing. I have no knowledge of 15 which drugs are purchased from where. 16 BY MR. ELSNER: 17 Q. Have you ever been involved in 18 discussions with Purdue or any other 19 manufacturer of opioids concerning contracts to 20 purchase those drugs? 21 MR. DELINSKY: Object to form. 22 A. I have not. 23 BY MR. ELSNER: 24 Q. Do you generally know whether CVS has</p> |
| <p style="text-align: right;">Page 127</p> <p>1 would last for decades. So I'm asking you, do 2 you know whether the pharmacies of which you are 3 the president of, do they dispense opioids? 4 Yes, no, I don't know. 5 MR. DELINSKY: Object to form. It's 6 already been asked and it's already been 7 answered. 8 MR. ELSNER: No. He's just said that 9 other people know more. But I didn't get the 10 answer. 11 MR. DELINSKY: He said right at the 12 beginning that he's not sure what pharmacies 13 dispense what pharmaceuticals. He said it, 14 Mike. It's in the transcript. 15 BY MR. ELSNER: 16 Q. I'd like to have an answer, please. 17 A. I'm not sure what pharmacies dispense 18 what drugs. That's -- other people at CVS 19 handle that. 20 Q. Did CVS ever purchase Schedule II 21 drugs like OxyContin or oxycodone directly from 22 manufacturers of those products? 23 MR. DELINSKY: Object to form. 24 A. Others at CVS are responsible for</p> | <p style="text-align: right;">Page 129</p> <p>1 ever purchased Schedule II drugs directly from a 2 manufacturer of those drugs or not? 3 A. Other people at CVS would be 4 responsible for pharmacy purchasing. I don't 5 have any knowledge about that. 6 Q. The Schedule II drugs that CVS 7 purchased from wholesalers like Cardinal, would 8 CVS receive any type of incentive program or 9 rebate program from those wholesalers? 10 MR. DAWSON: Object to form. 11 MR. DELINSKY: Object to form. 12 A. Others at CVS were responsible for 13 pharmacy purchasing, so I'm not knowledgeable 14 about that. 15 BY MR. ELSNER: 16 Q. Have you been involved at all in any 17 of the contract negotiations or discussions with 18 Cardinal concerning agreements to purchase 19 controlled substances from them? 20 MR. DAWSON: Object to the form. 21 A. Others at CVS were responsible for 22 that. 23 BY MR. ELSNER: 24 Q. So you've never had a role with</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 respect to that?</p> <p>2 A. I don't recall ever having a role with</p> <p>3 that.</p> <p>4 Q. With respect to the hydrocodone</p> <p>5 products that were distributed by CVS Indiana,</p> <p>6 did CVS Indiana purchase those drugs from a</p> <p>7 wholesaler? Did it purchase hydrocodone from a</p> <p>8 wholesaler or from the manufacturer of those</p> <p>9 drugs?</p> <p>10 MR. DELINSKY: Object to form.</p> <p>11 A. I'm not involved at all in pharmacy</p> <p>12 purchasing, so I don't know whether they came</p> <p>13 from a wholesaler or from manufacturers.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. When a pharmacy would select a</p> <p>16 particular -- order a particular drug like</p> <p>17 hydrocodone or a Schedule II drug, would the</p> <p>18 pharmacy sell -- pharmacist select where that</p> <p>19 drug would be purchased from, or delivered from,</p> <p>20 or was that an automatic process?</p> <p>21 MR. DELINSKY: Object to form.</p> <p>22 A. Others are involved in pharmacy</p> <p>23 purchasing and ordering. The others, the people</p> <p>24 that are responsible for ordering, would know</p> | <p style="text-align: right;">Page 132</p> <p>1 was rescheduled from a Schedule III narcotic to</p> <p>2 a Schedule II narcotic. Are you aware of that?</p> <p>3 MR. DELINSKY: Object to form.</p> <p>4 A. I'm aware of it through, you know, my</p> <p>5 role as an attorney.</p> <p>6 MR. ELSNER: I'm going to mark this</p> <p>7 next document as Exhibit 10.</p> <p>8 (Whereupon, CVS-Moffatt-10 was marked</p> <p>9 for identification.)</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. This is Motley Rice 213. This is an</p> <p>12 e-mail to a large group of people.</p> <p>13 And on the third page which bears the</p> <p>14 Bates number 66941, it says "CVS Caremark Daily</p> <p>15 News Report." And this one is dated August 22,</p> <p>16 2014.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I see that.</p> <p>19 Q. Are you aware of these daily news</p> <p>20 reports at CVS? Do you receive them?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Are they sent to all employees</p> <p>23 at CVS or just management, do you know?</p> <p>24 A. I believe they're sent to everyone</p> |
| <p style="text-align: right;">Page 131</p> <p>1 that. I don't know that.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. You don't know that? Okay.</p> <p>4 Would you agree with me that CVS,</p> <p>5 given its size and market share, has a great</p> <p>6 deal of data concerning the distribution and</p> <p>7 dispensing of hydrocodone combination products?</p> <p>8 MR. DELINSKY: Object to form.</p> <p>9 A. Others at CVS are responsible for</p> <p>10 whatever data we manage.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Do you know how that data is used, if</p> <p>13 at all, in conducting analysis of controlled</p> <p>14 substances to prevent diversion?</p> <p>15 MR. DELINSKY: Object to form.</p> <p>16 A. Others in various departments would</p> <p>17 have knowledge about that. I'm not involved in</p> <p>18 information management or how information is</p> <p>19 used.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. So you have no information about that?</p> <p>22 A. Others at CVS would have information.</p> <p>23 I am not involved in that process.</p> <p>24 Q. There came a time in which hydrocodone</p> | <p style="text-align: right;">Page 133</p> <p>1 that has a mailbox. Not every employee at CVS</p> <p>2 has a mailbox.</p> <p>3 Q. So anyone that has an e-mail address,</p> <p>4 is that right, a CVS mailbox address?</p> <p>5 A. I'm not involved in the distribution,</p> <p>6 so I'm not 100 percent sure, but it would be,</p> <p>7 you know -- it would certainly be restricted to</p> <p>8 people that have CVS e-mail addresses.</p> <p>9 Q. Okay. And how often does this come</p> <p>10 out? Is it weekly, daily?</p> <p>11 A. I'm not involved in the production of</p> <p>12 it. It says "Daily News Report."</p> <p>13 Q. But you do receive them, is that</p> <p>14 right?</p> <p>15 MR. DELINSKY: Object to form.</p> <p>16 A. I do receive the -- I think it's</p> <p>17 called something different now. The company is</p> <p>18 called something different now. So it's -- but,</p> <p>19 yeah, I've seen reports like this.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Okay. If I could ask you to turn to</p> <p>22 CVS-66952. And there's a reporting on the</p> <p>23 bottom, there's an article from the AP dated</p> <p>24 August 21, 2014, and it says "New Restrictions</p> |

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| <p style="text-align: right;">Page 134</p> <p>1 on Hydrocodone to Take Effect." 2 Do you see that? 3 A. Yes. 4 Q. Okay. And then the first paragraph, 5 it says "The federal government is finalizing 6 new restrictions on hundreds of medicines 7 containing hydrocodone, the highly addictive 8 painkiller that has grown into the most widely 9 prescribed drug in the United States." 10 Do you see that? 11 A. Yes. 12 Q. Is this the type of information that 13 would be shared with the employees at CVS, these 14 news articles, on a routine basis? 15 MR. DELINSKY: Object to form. 16 A. I'm not involved in the production of 17 this. I don't know how it's put together. I 18 don't know what information finds its way into 19 this. 20 BY MR. ELSNER: 21 Q. It says in the third paragraph there 22 that, and this is a quote from the DEA chief, 23 Michelle -- is it Leonhart? Do you know the 24 name?</p> | <p style="text-align: right;">Page 136</p> <p>1 Q. Were you aware that the federal 2 government was in the process of trying to 3 reschedule hydrocodone from a Schedule III to a 4 Schedule II drug in 2013 and '14? 5 MR. DELINSKY: Object to form. Asked 6 and answered. 7 A. Others at CVS would have been 8 responsible for keeping track of that sort of 9 information. As a corporate lawyer, I wasn't 10 involved in it. 11 BY MR. ELSNER: 12 Q. Were you aware that the State of New 13 York had rescheduled hydrocodone from a Schedule 14 III to a Schedule II within the state in August 15 of 2012? 16 MR. DELINSKY: Object to form. 17 A. Others at CVS would have been 18 responsible for which drug is coming from where, 19 so I was not involved in that process. 20 BY MR. ELSNER: 21 Q. Generally when a state creates a 22 stricter requirement, either for the 23 distribution of a controlled substance or on 24 some other basis, was it CVS's policy to follow</p> |
| <p style="text-align: right;">Page 135</p> <p>1 A. I don't know the name. 2 Q. It says "Today's action recognizes 3 that these products are some of the most 4 addictive and potentially dangerous prescription 5 medications available." 6 Do you agree with that statement? 7 MR. DELINSKY: Object to form. 8 A. I agree that you read it. I have no 9 basis for agreeing or disagreeing with 10 Michelle's statement. 11 BY MR. ELSNER: 12 Q. The head of the DEA, right? 13 A. DEA chief. That's the way it's 14 characterized by the AP. I don't recognize the 15 name. 16 Q. At the time CVS was distributing from 17 its distribution centers hydrocodone, is that 18 right? 19 MR. DELINSKY: Object to form. 20 A. Others at CVS were responsible for 21 which drugs were shipped from which facility, so 22 I'm not -- I'm not aware of what was being 23 shipped from where at this time. 24 BY MR. ELSNER:</p> | <p style="text-align: right;">Page 137</p> <p>1 that stricter requirement within those states? 2 MR. DELINSKY: Object to form. 3 A. Others at CVS would have been 4 responsible for how we complied with various 5 regulations. I'm not aware of how we addressed 6 the New York regulation that you just spoke of. 7 BY MR. ELSNER: 8 Q. But do you understand that these 9 various regulations are minimum standards, and 10 that CVS could always do more than the minimum 11 standard if it chose to? 12 MR. DELINSKY: Object to form. 13 A. Again, others at CVS are responsible 14 for compliance and so forth, so they would be 15 making that decision. 16 BY MR. ELSNER: 17 Q. But they may be, but from your 18 perspective as the president of all sorts of 19 pharmacies, the president of distribution 20 centers, did you understand that when the 21 federal government created regulations that 22 those were minimum standards that CVS could do 23 more? 24 MR. DELINSKY: Object to the form of</p> |

| | |
|--|---|
| <p style="text-align: right;">Page 138</p> <p>1 the question.</p> <p>2 A. Others at CVS are responsible -- were</p> <p>3 involved in that analysis. It's not part of my</p> <p>4 role.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Did you understand that CVS didn't --</p> <p>7 wasn't required to distribute hydrocodone by the</p> <p>8 government, right?</p> <p>9 MR. DELINSKY: Object to form.</p> <p>10 A. Others are responsible for which drugs</p> <p>11 are distributed. I'm not aware of the</p> <p>12 government requiring us to do anything. Pay</p> <p>13 taxes, but other than that...</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. Right. So there's no -- so CVS could</p> <p>16 make a choice. They could choose to distribute</p> <p>17 hydrocodone or not, right?</p> <p>18 MR. DELINSKY: Object to form.</p> <p>19 A. Others are responsible for deciding</p> <p>20 what drugs we distribute.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Well, CVS had a decision to make</p> <p>23 whether to sell cigarettes or not, right?</p> <p>24 MR. DELINSKY: Object to form.</p> | <p style="text-align: right;">Page 140</p> <p>1 of what drugs to sell. But I know that many</p> <p>2 people need them, and I can't imagine a pharmacy</p> <p>3 deciding not to sell a drug that's needed.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. Under any circumstances?</p> <p>6 A. It's not my decision.</p> <p>7 Q. CVS was a member of the National</p> <p>8 Association of Chain Drugstores, correct?</p> <p>9 A. Yes, and we still are. It's not was,</p> <p>10 is.</p> <p>11 Q. Is. That's fair.</p> <p>12 And that CVS contributes millions of</p> <p>13 dollars to the NACDS, isn't that right?</p> <p>14 MR. DELINSKY: Object to form.</p> <p>15 A. I don't -- I'm not involved in what --</p> <p>16 I don't know that we would contribute. I'm not</p> <p>17 familiar with NAC -- our involvement with NACDS.</p> <p>18 I know we're a member.</p> <p>19 MR. ELSNER: I'm going to mark this</p> <p>20 next exhibit, which is Exhibit 11.</p> <p>21 (Whereupon, CVS-Moffatt-11 was marked</p> <p>22 for identification.)</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. This is also from CVS Health's</p> |
| <p style="text-align: right;">Page 139</p> <p>1 A. That's correct.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. And CVS decided, I think wisely, not</p> <p>4 to do so, and they made that decision, and the</p> <p>5 same could have been chosen for hydrocodone,</p> <p>6 right?</p> <p>7 MR. DELINSKY: Object to form.</p> <p>8 A. I suppose that's true. But tobacco</p> <p>9 has no therapeutic value, unlike prescription</p> <p>10 drugs.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. I agree.</p> <p>13 A. So there's a very big difference</p> <p>14 between deciding not to sell tobacco and</p> <p>15 deciding not to sell a medication that many</p> <p>16 people need.</p> <p>17 Q. Understood, and I agree with that</p> <p>18 statement.</p> <p>19 But you would agree with me that</p> <p>20 there's no requirement for CVS to distribute</p> <p>21 hydrocodone?</p> <p>22 MR. DELINSKY: Object to form. Asked</p> <p>23 and answered.</p> <p>24 A. Again, other people make the decision</p> | <p style="text-align: right;">Page 141</p> <p>1 website. And it's Motley Rice 207.</p> <p>2 And there's a section on the website</p> <p>3 with Trade Association and Coalition</p> <p>4 Participation.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. If you turn to the next page,</p> <p>8 there's a listing here among the trade</p> <p>9 associations as the National Association of</p> <p>10 Chain Drugstores.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And on the top, this is a list</p> <p>14 of contributions/dues to the trade associations</p> <p>15 and coalitions. That's what the banner reads on</p> <p>16 the top of the page, is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And next to the National</p> <p>19 Association of Chain Drugstores, the</p> <p>20 contribution from January, 2017 to March, 2018</p> <p>21 was a little over \$1.5 million, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And then if you go to the next</p> <p>24 page, 2016, for National Association of Chain</p> |

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1 Drugstores the amount was over \$1.4 million in
2 dues and contributions, is that right?
3 A. The way it's characterized is
4 contributions/dues. In some cases it's
5 contributions. In other cases it's dues.
6 Q. But regardless, the number in 2016 for
7 the National Association of Chain Drugstores was
8 \$1.4 million, is that right?
9 A. That -- yes, that's what this says.
10 Q. And for 2015, that amount was also
11 about a little over \$1.4 million.
12 MR. DELINSKY: I'm sorry. What year,
13 Mike?
14 MR. ELSNER: 2015 on the next page.
15 A. Again, that's what this says, yes.
16 BY MR. ELSNER:
17 Q. On the next page, in 2014 that amount
18 was \$1.2 million?
19 A. That's what this says, yes.
20 Q. So you'd agree with me that CVS Health
21 was contributing dues and other contributions to
22 the National Association of Chain Drugstores at
23 least during this period of time over a million
24 dollars a year, is that right?

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1 MR. DELINSKY: Object to form.
2 A. During the time frame that we were
3 just reading, yes. It looks like it was lower
4 in the prior years.
5 BY MR. ELSNER:
6 Q. Yes, that's true. That's correct.
7 In 2013, that amount was half a
8 million dollars, is that right?
9 A. Let's see.
10 Q. That's Page 6.
11 A. Yes. 526,000.
12 Q. In 2012 it was 421,000, is that right?
13 A. Yes.
14 Q. Okay. Do you know why the amount
15 doubled in 2013 and '14, around the same time
16 that hydrocodone was being rescheduled by the
17 United States Government?
18 A. I have no involvement in how dues are
19 paid for these organizations, so others at CVS
20 would be knowledgeable about that.
21 Q. Are you aware that various executives
22 of CVS have served as directors of the National
23 Association of Chain Drugstores?
24 MR. DELINSKY: Object to form.

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1 A. Yes, I am aware of that.
2 BY MR. ELSNER:
3 Q. Do you know that Larry Merlo served as
4 the president and -- who is the president and
5 chief executive officer of CVS Health, he served
6 as the director of the National Association of
7 Chain Drugstores in 2015?
8 MR. DELINSKY: Object to form.
9 A. Larry Merlo is his name. I'm not
10 familiar with what specific role he played at
11 NACDS.
12 BY MR. ELSNER:
13 Q. Okay. But you were generally aware
14 that there were directors of CVS or executives
15 at CVS that served in leadership positions with
16 the National Association of Chain Drugstores?
17 A. Yes, I was aware of that.
18 Q. Okay. Do you know who in particular?
19 A. Mr. Merlo, as you said. I believe
20 John Roberts might have been another.
21 Q. Okay.
22 A. Again, I'm not really involved in our
23 relationship with NACDS.
24 Q. What about -- is it Kevin Hourican?

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1 A. Hourican. I know Kevin. I'm not
2 familiar with any role he might play at NACDS.
3 Q. And he was the executive vice
4 president of CVS Health and the president of CVS
5 Pharmacy at one point in time, is that right?
6 A. That's his current title.
7 Q. Current title?
8 A. Yeah, in 2018 he became that.
9 Q. He became that.
10 What about the Healthcare Distribution
11 Management Association, were you aware that CVS
12 was a member of that trade association?
13 MR. DELINSKY: Object to form.
14 A. I'm not familiar with that trade
15 association. I'm not involved in which
16 associations we participate in.
17 BY MR. ELSNER:
18 Q. Were you aware that the National
19 Association of Chain Drug Stores had opposed the
20 rescheduling of hydrocodone?
21 A. I'm not -- others at CVS were involved
22 with NACDS. We're not -- obviously we're not
23 the only participant in that organization, so
24 I'm not familiar with NACDS's activities.

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1 Q. Did you know that NACDS was opposing
2 the rescheduling of hydrocodone combination
3 products?
4 MR. DELINSKY: Object to form.
5 A. Others at CVS were involved with
6 NACDS. I was not familiar with our relationship
7 and what their activities might have been.
8 (Whereupon, CVS-Moffatt-12 was marked
9 for identification.)
10 BY MR. ELSNER:
11 Q. I'm going to mark this as Exhibit 12.
12 This is CVS-103475.
13 And on the bottom there's an e-mail
14 from Kevin Nicholson.
15 Do you see that?
16 A. Yes.
17 Q. Okay. And he has an e-mail address
18 with the suffix NACDS.org.
19 Do you see that?
20 A. Yes.
21 Q. And the date of this is Wednesday,
22 November 13, 2013.
23 Do you see that?
24 A. Yes.

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1 Q. And he writes in the second paragraph
2 "Please see the attached letter from Pharmacy
3 Associations to HHS opposing FDA's
4 recommendation to reschedule combination
5 hydrocodone products."
6 Do you see that?
7 A. Yes.
8 Q. And so NACDS was opposing the
9 rescheduling of hydrocodone products, correct?
10 MR. DELINSKY: Object to form.
11 A. I don't know anything about the
12 preparation of this or anything about NACDS's
13 position. I don't see the letter. So I don't
14 really have --
15 BY MR. ELSNER:
16 Q. But that's what it says, right, that
17 they were going to oppose FDA's recommendation
18 to reschedule combination hydrocodone products?
19 MR. DELINSKY: Object to form.
20 A. From -- it says from various --
21 "from pharmacy associations to HHS" and NACDS
22 signed the letter along with -- I don't know
23 what all these letters stand for.
24 BY MR. ELSNER:

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1 Q. Okay. If you see above, and the
2 letter was opposing the rescheduling of
3 combination hydrocodone products, right?
4 MR. DELINSKY: Object to form.
5 A. Could you --
6 BY MR. ELSNER:
7 Q. Yeah, I just -- you said that NACDS
8 signed the letter along with these other trade
9 associations, and the letter was, as referred to
10 by Kevin Nicholson here, was opposing FDA's
11 recommendation to reschedule combination
12 hydrocodone products. That's what it says?
13 A. Yeah, I see where Nicholson says that,
14 yes.
15 Q. And then above that there's an e-mail
16 from Michael Ayotte.
17 Do you see that?
18 A. Ayotte.
19 Q. Ayotte. Who is that?
20 A. He's a member of our government
21 affairs department.
22 Q. And is he an employee of CVS Caremark?
23 A. He's an employee of CVS Pharmacy.
24 Q. CVS Pharmacy.

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1 Okay. And he is sending this e-mail
2 to Marissa -- these two names there. Do you
3 know who those people are?
4 A. Marissa Schlaifer was his boss in
5 government affairs. Papatya Tankut is -- she
6 was in pharmacy operations, I believe. I'm not
7 really sure. I know the name, and I know her.
8 Q. And Michael Ayotte is asking, "do we
9 still support this move?" That's what he wrote,
10 correct?
11 A. That's what it says, yes.
12 Q. Okay. And the response from Marissa
13 Schlaifer was "We are fine with this position
14 although we won't be stating that as publicly,"
15 correct?
16 MR. DELINSKY: Object to the form of
17 the question.
18 A. That's what --
19 MR. DELINSKY: Hold on one second. I
20 further object to the selection of this exhibit
21 to the exclusion of other materials as
22 misleading.
23 MR. ELSNER: Objection. You can ask
24 questions when you get a chance.

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|---|---|
| <p style="text-align: right;">Page 150</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Is that what the e-mail says?</p> <p>3 A. I don't know anything about the</p> <p>4 context of how -- what was being commented on</p> <p>5 here. That is what the e-mail says, if you just</p> <p>6 read it. But again, this -- I'm sure there's</p> <p>7 more information out there.</p> <p>8 Q. So CVS opposed the rescheduling of</p> <p>9 hydrocodone combination products but was not</p> <p>10 doing so publicly, correct?</p> <p>11 A. I was not --</p> <p>12 MR. DELINSKY: Excuse me. I object to</p> <p>13 the form of the question. That's inaccurate, to</p> <p>14 put it mildly.</p> <p>15 A. So this says NACDS signed the letter.</p> <p>16 We're one member of I don't know how many</p> <p>17 members of NACDS. It's not -- CVS was not</p> <p>18 itself making -- saying anything about the</p> <p>19 letter.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Except that they were fine with that</p> <p>22 position, right?</p> <p>23 MR. DELINSKY: Object to the form of</p> <p>24 the question.</p> | <p style="text-align: right;">Page 152</p> <p>1 Masters case?</p> <p>2 MR. DELINSKY: Object to the form of</p> <p>3 the question.</p> <p>4 A. Others at CVS are involved with any</p> <p>5 involvement we have with NACDS. I'm not</p> <p>6 familiar with the Masters case or any amicus</p> <p>7 brief.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Have you ever read the Southwood</p> <p>10 decision or the Masters decision?</p> <p>11 A. Others at CVS would be -- would follow</p> <p>12 that sort of thing more closely. It's possible,</p> <p>13 but I don't recall.</p> <p>14 Q. Did you know that CVS through these</p> <p>15 trade associations participated in an amicus</p> <p>16 brief in the Masters case?</p> <p>17 MR. DELINSKY: Object to the form of</p> <p>18 the question.</p> <p>19 A. Others at CVS were involved with</p> <p>20 NACDS, so they would be informed about that.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Who at CVS would have made the</p> <p>23 decision to participate or not in that amicus</p> <p>24 brief?</p> |
| <p style="text-align: right;">Page 151</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. That's what's written in the e-mail,</p> <p>3 right?</p> <p>4 A. That's what's written in the e-mail.</p> <p>5 I don't know about the context or what else we</p> <p>6 were saying or what else we were doing.</p> <p>7 Q. Did CVS support the rescheduling of</p> <p>8 hydrocodone or not?</p> <p>9 A. Others at CVS would be responsible for</p> <p>10 that.</p> <p>11 Q. Do you know the profit margin on the</p> <p>12 dispensing of hydrocodone products?</p> <p>13 A. Others at CVS are involved in the</p> <p>14 financials. That's not my area.</p> <p>15 Q. Are you aware of the profit margin on</p> <p>16 distributing hydrocodone combination products at</p> <p>17 CVS?</p> <p>18 MR. DELINSKY: Object to the form.</p> <p>19 A. Others at CVS are responsible for all</p> <p>20 financial information.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Are you aware that as a member of the</p> <p>23 National Association of Chain Drug Stores that</p> <p>24 CVS participated in an amicus brief in the</p> | <p style="text-align: right;">Page 153</p> <p>1 A. I am not sure. I don't know.</p> <p>2 Q. Would it have been a decision in the</p> <p>3 legal department, or would it have been a</p> <p>4 decision in the regulatory affairs department?</p> <p>5 MR. DELINSKY: Object to form.</p> <p>6 A. Generally speaking, legal matters are</p> <p>7 legal -- the legal department decisions</p> <p>8 ultimately.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. And who in the legal department would</p> <p>11 have made that decision?</p> <p>12 MR. DELINSKY: Object to form. Asked</p> <p>13 and answered.</p> <p>14 A. Others in the legal department. I'm</p> <p>15 not really sure. It would depend on the type of</p> <p>16 matter, and I'm not familiar with the Masters</p> <p>17 case. I don't know.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Okay. Well, the Masters decision</p> <p>20 involved a suspicious order monitoring program</p> <p>21 and whether it met the requirements of the</p> <p>22 Controlled Substances Act. So assuming that to</p> <p>23 be the case, who within the legal department</p> <p>24 would have made the decision to participate or</p> |

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1 not in the Masters amicus brief filed by the
2 National Association of Chain Drugstores?
3 A. I'm not sure. It would probably be --
4 I don't know. I don't know enough about the
5 matter.
6 Q. Have you ever attended any CLE
7 programs at CVS or anywhere else that discussed
8 the Masters decision?
9 A. I don't recall any CLEs that discussed
10 it, but we do a lot of them.
11 MR. ELSNER: Why don't we take a quick
12 break.
13 THE VIDEOGRAPHER: We're going off the
14 record at 11:05 a.m.
15 (Whereupon, a recess was taken.)
16 THE VIDEOGRAPHER: We're back on the
17 record at 11:17 a.m.
18 BY MR. ELSNER:
19 Q. Mr. Moffatt, you are aware that there
20 have been instances in which the DEA has issued
21 suspension orders to CVS pharmacies, correct?
22 A. I am aware of that.
23 Q. Okay. And you understand that when a
24 pharmacy or a distribution center is not

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1 adhering to the requirements of the Controlled
2 Substances Act that there's a danger that that
3 facility or pharmacy could lose its DEA license
4 or registration, correct?
5 MR. DELINSKY: Object to form.
6 A. I'm aware that that has happened, you
7 know. It's not my area, other people handle
8 that sort of thing.
9 BY MR. ELSNER:
10 Q. But you're aware that the DEA has that
11 authority, right?
12 A. I'm generally aware.
13 Q. Okay. And are you aware of any other
14 actions that the DEA could take against a
15 pharmacy or distribution center other than
16 issuing a suspension order?
17 A. It's not my area. I don't handle the
18 government investigation type things, but I'm
19 aware that there are other penalties and fines
20 and letters and so forth.
21 Q. And there are actions that could be
22 brought by the DEA against those pharmacies to
23 remove those registrations and licenses, is that
24 right?

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1 MR. DELINSKY: Object to form.
2 A. Again, not my area, but I'm generally
3 aware that that's possible, yes.
4 BY MR. ELSNER:
5 Q. Okay. And you're aware, are you not,
6 that the DEA issued an immediate suspension
7 order for two CVS pharmacies in Florida because
8 they posed an imminent danger to public health
9 or safety, correct?
10 MR. DELINSKY: Object to form.
11 A. I am aware of the action in Florida.
12 I don't know about the characterization as to
13 the reason that you stated.
14 BY MR. ELSNER:
15 Q. Okay. You know that the DEA suspended
16 two CVS pharmacies from distributing controlled
17 substances in Florida, is that right?
18 MR. DELINSKY: Object to form.
19 A. I am aware of that situation, yes.
20 BY MR. ELSNER:
21 Q. And those pharmacies were the Holiday
22 CVS, LLC pharmacies, numbers 5195 and 219, is
23 that right?
24 A. Those store numbers sound familiar.

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1 We have a lot of stores. Holiday CVS operates
2 all or virtually all the stores in Florida.
3 Q. And you're the president of Holiday
4 CVS, or were, is that right?
5 A. I am currently, since the same time
6 frame as Indiana and Rx Services, early 2011.
7 Q. In what year did you become the
8 president of Holiday CVS?
9 A. I think it would have been the
10 beginning of 2012.
11 Q. Okay. And prior to that were you a
12 secretary of Holiday CVS?
13 A. Yes.
14 Q. Starting in 2006, or was it before?
15 A. Again, I don't know specific titles
16 for specific entities back at that time frame.
17 I might have been assistant secretary and then
18 secretary. But probably secretary at that
19 point.
20 Q. Okay. And are you the president of
21 Holiday CVS today?
22 A. Yes.
23 MR. ELSNER: I'm going to mark this as
24 Exhibit 13.

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1 (Whereupon, CVS-Moffatt-13 was marked
 2 for identification.)
 3 BY MR. ELSNER:
 4 Q. And this is a declaration of Joseph
 5 Rannazzisi. And we've seen that name before.
 6 He was with the DEA at this time, is that right?
 7 A. Yes, that's what it says in the first
 8 couple paragraphs here.
 9 Q. All right. He's the deputy assistant
 10 administrator for the DEA's Office of Diversion
 11 Control at this time in 2012, is that right?
 12 MR. DELINSKY: Object to form.
 13 A. That's what the Paragraph 1 says, yes.
 14 BY MR. ELSNER:
 15 Q. All right. The caption here is for an
 16 action that was filed in the U.S. District Court
 17 for the District of Columbia, Holiday CVS versus
 18 Eric Holder.
 19 Do you see that?
 20 A. Yes, I see the caption.
 21 Q. And are you aware this action was
 22 taken in the district court in DC?
 23 A. Others in the legal department would
 24 have been involved in this. I'm not familiar

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1 with this particular action. So I see that, you
 2 know, it's Holiday CVS, Eric Holder was attorney
 3 general, but I don't know anything about, you
 4 know, this matter.
 5 Q. So as the president of Holiday CVS,
 6 you didn't know that this action was pending in
 7 federal court in DC?
 8 MR. DELINSKY: Object to form.
 9 A. To the extent I knew anything about
 10 it, it would have been in my role as an
 11 attorney, so...
 12 BY MR. ELSNER:
 13 Q. Before we get to what you know, did
 14 you know that it existed or not, the filing was
 15 made?
 16 MR. DELINSKY: Objection. Asked and
 17 answered.
 18 A. I would need to know more about the
 19 case. Just reading the caption.
 20 BY MR. ELSNER:
 21 Q. Fair enough.
 22 A. I'm not a litigator. I'm a corporate
 23 guy, so I would need to know more about where
 24 this fits into the whole picture.

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1 Q. Okay. Let's go through it a little
 2 bit.
 3 If you turn to Paragraph 3 of the
 4 declaration, which is on Page 2, in the second
 5 sentence it reads "I participated in the
 6 decision-making process that led to the issuance
 7 of an Immediate Suspension Order against Holiday
 8 CVS, CVS Pharmacy 219 and CVS Pharmacy 5195 on
 9 February 2, 2012." Is that right?
 10 A. Yes, that's what that says.
 11 Q. Okay. And this was filed in 2012, and
 12 so at this time you were the president of
 13 Holiday CVS?
 14 A. I believe so, yes.
 15 Q. Okay. If you turn to Page 9 of the
 16 declaration, which is Paragraph 24, there's a
 17 heading "CVS 219 and CVS 5195." And if it's
 18 easier to use the screen, that's available for
 19 you, or the paper, whatever you'd prefer.
 20 It says in Paragraph 24 that CVS 219
 21 was located at 3798 Orlando Drive in Sanford,
 22 Florida, and is registered with the DEA as a
 23 chain pharmacy in Schedules II, III, IV and V
 24 controlled substances under a DEA registration

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1 number. And then in Paragraph 25 it says CVS
 2 5195 was located at 4639 West 1st Street in
 3 Sanford, Florida.
 4 Do you see that?
 5 A. Yeah, well, it says "located at," not
 6 "was." They still are. Yeah.
 7 Q. I wasn't sure about store 5195. Are
 8 you? Is it still located at that address?
 9 A. I'm not sure. I don't know the
 10 particulars for all of this.
 11 Q. That's why I said "was" because I
 12 don't know if today it's located at the same
 13 address. Do you know?
 14 A. I don't know. I don't know the
 15 particulars. I just know that the store still
 16 exists.
 17 Q. Were you aware that these were the two
 18 stores that were the subject of the DEA
 19 suspension in 2012?
 20 MR. DELINSKY: Object to form.
 21 Objection, asked and answered.
 22 A. I am aware of that because, you know,
 23 I was informed based on my role as an attorney.
 24 BY MR. ELSNER:

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1 Q. Okay. And these two stores were
 2 Holiday CVS stores, correct?
 3 A. That's correct.
 4 Q. Okay. It says in the next section,
 5 "Notice to CVS of Diversion Problems." In
 6 Paragraph 26 it says that "On December 8, 2010,
 7 DEA hosted a meeting with CVS at the DEA West
 8 Palm Beach Resident Office." And then it lists
 9 a group of people who were in attendance.
 10 Were you aware that CVS held a
 11 meeting -- I'm sorry, that the DEA held a
 12 meeting with CVS long before the suspension
 13 order was issued in December of 2010 to warn
 14 them of problems of diversion from their
 15 pharmacies?
 16 MR. DELINSKY: Object to form.
 17 A. I'm not at all familiar with this
 18 document, so I don't know the context of how
 19 this was put together. I wasn't involved in the
 20 meeting certainly, so I don't really know
 21 anything about what was said or anything at the
 22 meeting.
 23 MR. DELINSKY: Mike, just hold on.
 24 Did you say you were not, wasn't involved in the

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1 meeting?
 2 THE WITNESS: Exactly. I was -- no,
 3 I'm not on the list here.
 4 MR. DELINSKY: Okay.
 5 THE WITNESS: So, no, I was not
 6 involved, and I wouldn't have been. It's not my
 7 area.
 8 BY MR. ELSNER:
 9 Q. In Paragraph 27 it says that John
 10 Gilbert, Counsel for CVS/Caremark, made a brief
 11 statement. "Mr. Gilbert stated," this is a
 12 quote from Mr. Rannazzisi's affidavit, "that CVS
 13 was aware of the pill mill and/or pain clinic
 14 situation and the diversion of controlled
 15 substances, primarily oxycodone, in Florida."
 16 What was CVS aware of the pain mill
 17 and pain clinic situation in Florida at this
 18 time?
 19 MR. DELINSKY: Object to form.
 20 A. I don't know anything about this
 21 meeting, or if this is an accurate
 22 characterization of what he said. I don't know
 23 Mr. Gilbert. Again, it's not my area.
 24 BY MR. ELSNER:

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1 Q. You don't know Mr. Gilbert, counsel
 2 for CVS/Caremark?
 3 A. That's not a real entity name, but
 4 just as a corporate lawyer, that bugs me a
 5 little bit. But I know Mr. Gilbert. I know the
 6 name. But again, I think he's a litigator. And
 7 I'm not a litigator, I'm a corporate person, so
 8 I've seen the name, but I've never interacted
 9 with him.
 10 Q. Is he in-house at CVS, or is he
 11 outside counsel?
 12 A. He's outside counsel.
 13 Q. Do you know what firm he's with?
 14 A. I don't. I didn't have direct
 15 involvement with him.
 16 Q. And as the president of Holiday CVS,
 17 no one informed you of the pill mill and/or pain
 18 clinic situation in Florida?
 19 MR. DELINSKY: Object to form.
 20 A. Others at CVS would have been
 21 responsible for that sort of thing. Nobody
 22 informed me of anything as president. Again, as
 23 a lawyer for the company I may have been
 24 informed, but not as president.

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1 BY MR. ELSNER:
 2 Q. If you turn to Paragraph 29 on
 3 Page 11, it reads "CVS 219's and CVS 5195's
 4 District Supervisor, Jennifer Lalani,
 5 acknowledged that she was aware of an increase
 6 in the number of oxycodone prescriptions that
 7 have been presented to CVS, especially in the
 8 Orlando, Florida area." She then says that
 9 she -- Mr. Rannazzisi says that "Ms. Lalani also
 10 made reference to an October '10 letter sent to
 11 the pharmacies from the Hillsborough County
 12 Sheriff David Gee. In that letter, Sheriff Gee
 13 made a plea to area pharmacies to work with law
 14 enforcement and closely scrutinize the
 15 prescriptions they receive in order to deal with
 16 the prescription drug epidemic in Florida."
 17 Were you aware that CVS pharmacies
 18 that you were president of received a letter
 19 from the sheriff in Hillsborough County?
 20 MR. DELINSKY: Object to form.
 21 A. Others at CVS would have been
 22 responsible for operations and compliance, and
 23 they would have been informed of this. I would
 24 not have been informed of this.

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| <p style="text-align: right;">Page 166</p> <p>1 BY MR. ELSNER: 2 Q. And you were not? 3 A. Others at CVS that were responsible 4 for this sort of thing were aware. 5 Q. But you were not? 6 A. Others were. 7 Q. Others were, but you were not, right? 8 A. I may have been informed of something 9 in my capacity as an attorney. I don't recall. 10 Q. If you turn to Page 32, it reads 11 "Mrs. Lalani" -- sorry, I'll let you get there. 12 Not Page 32, sorry, Page 12, Paragraph 32. My 13 apologies. 14 It reads "Ms. Lalani confirmed that 15 CVS 219 was located in Sanford, Florida and was 16 under her supervision. Ms. Lalani agreed that 17 the volume of oxycodone purchased by this 18 pharmacy was extremely high; Ms. Lalani was 19 unable to explain why the volume was so high." 20 Were you aware that the two 21 pharmacies -- that CVS 219 that you were the 22 president of had a high volume of oxycodone 23 purchased by this pharmacy? 24 MR. DELINSKY: Object to form.</p> | <p style="text-align: right;">Page 168</p> <p>1 this type of meeting. You know, as an attorney 2 I may have been informed about it, but not as 3 president. 4 BY MR. ELSNER: 5 Q. Were you aware that the DEA conducted 6 an investigation of these two pharmacies, CVS 7 pharmacies in Florida, and interviewed employees 8 as part of its investigation? 9 A. Others would have been involved 10 directly in that situation. I was not involved 11 in that. 12 Q. If you turn to Page 15 of the 13 affidavit, Paragraph 41, it says the "DEA 14 personnel interviewed employees from both CVS 15 219 and CVS 5195." And under A, it says that 16 "The Pharmacist in Charge at CVS 219...stated 17 that the majority of the diagnosis codes listed 18 by the prescribing practitioners on the 19 oxycodone prescriptions were the same, and that 20 customers requested certain brands of oxycodone, 21 referring to them as 'Ms' or 'blues.'" 22 Were you aware of that? 23 A. I was not. The others were involved 24 in this situation. I was not directly involved.</p> |
| <p style="text-align: right;">Page 167</p> <p>1 A. Others at CVS would have been 2 responsible for operations and compliance, and 3 they would have been involved in this. I wasn't 4 informed as president. As an attorney I may 5 have been informed of things, but I don't recall 6 seeing this. 7 BY MR. ELSNER: 8 Q. It then reads in Paragraph 33 that on 9 August 12, 2011 that the DEA hosted a second 10 meeting with CVS at the DEA Weston Resident 11 Office, and that in attendance at the meeting 12 were DEA representatives and 24 supervisors and 13 managers from various South Florida CVS 14 pharmacies. 15 Were you aware that the DEA hosted a 16 second meeting solely as president of CVS 17 Holiday Inn August 12, 2011? 18 A. Others at CVS would have been involved 19 in this -- this situation, but I don't recall 20 being involved in it. 21 Q. As president of CVS Holiday, you were 22 not informed, correct? 23 MR. DELINSKY: Object to form. 24 A. Others would have been involved in</p> | <p style="text-align: right;">Page 169</p> <p>1 And I don't know if that's Ms. or Ms. But in 2 any event, other attorneys would have been 3 involved in this type of situation. 4 BY MR. ELSNER: 5 Q. Have you heard of oxycodone being 6 referred to as Ms? 7 A. No. I just didn't see a period, 8 that's why I said Ms as opposed to Ms. I am not 9 aware of them being referred to by either name. 10 Q. Under paragraph B it reads "One of the 11 pharmacists at CVS 219...stated that many of the 12 patients receiving oxycodone prescriptions 13 received the same cocktail of prescriptions, 14 including oxycodone 30 milligrams, oxycodone 15 15 milligrams, alprazolam 2 milligrams." 16 Were you aware that individuals coming 17 to CVS 219 were -- held prescriptions for a 18 cocktail of drugs? 19 MR. DELINSKY: Object to form. 20 A. I was not involved in any of this. I 21 wasn't there. I don't know that that's her 22 characterization of the group of prescriptions 23 or if it's the -- Mr. Rannazzisi. But, you 24 know, you've read that correctly.</p> |

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1 BY MR. ELSNER:
2 Q. Well, it states here that Susan Masso,
3 who is one of the pharmacists at CVS, "stated
4 that many of the patients."
5 Do you see that there?
6 MR. DELINSKY: Object to form.
7 A. I do see that, and I see the word
8 "cocktail" in quotes, and I don't know if that
9 means that's a quote from her or if that's his
10 characterization of the group of prescriptions.
11 BY MR. ELSNER:
12 Q. Well, regardless, she said patients
13 were coming in with prescriptions for multiple
14 different drugs that are listed there, oxycodone
15 30 milligrams and 15 milligrams and the others,
16 correct?
17 A. Again, I was not involved in this,
18 others were. That is what this paragraph says.
19 Q. Okay. And in paragraph C it reads
20 that "The Pharmacist in Charge at CVS 5195,
21 Jessica Merrill, stated that she set a daily
22 limit of how many oxycodone 30-milligram
23 prescriptions the pharmacy would fill each day.
24 The limit was set based upon the amount of

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1 oxycodone the pharmacy had on-hand each day.
2 PIC Merrill" stated "that the reason she set
3 this daily limit was to ensure that the pharmacy
4 had enough oxycodone 30 milligrams to fill the
5 prescriptions for 'real pain patients.'"
6 Were you aware of that?
7 MR. DELINSKY: Object to form.
8 A. I was not involved in this. Other
9 attorneys were. I was not at the interview or
10 anything like that, so this is the first I'm
11 reading of it.
12 BY MR. ELSNER:
13 Q. Well, as an executive at CVS, would it
14 concern you that a CVS Pharmacy was dispensing
15 drugs to patients that were not in real pain,
16 oxycodone in particular?
17 MR. DELINSKY: Object to form.
18 A. I was not involved in this at all, and
19 I don't know anything about how this was being
20 characterized, so I don't have a view on that.
21 BY MR. ELSNER:
22 Q. Well, do you have any reason to
23 believe it's being mischaracterized by Joseph
24 Rannazzisi?

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1 A. I have no reason to believe either way
2 whether it is correct or incorrect. I wasn't --
3 Q. You're not suggesting that he lied
4 under oath?
5 A. No. I'm saying I -- you know, I
6 wasn't there, I don't know -- I wasn't at any of
7 these interviews, don't know anything about it.
8 Q. Well, does it concern you as an
9 executive at CVS that pharmacists were saving
10 aside oxycodone in the height of the opioid
11 epidemic for, I quote, real pain patients?
12 MR. DELINSKY: Object to form.
13 Objection, asked and answered.
14 A. You know, I'm not involved in this
15 area, and I don't have a view on it.
16 BY MR. ELSNER:
17 Q. I know, but you've been at CVS a
18 really long time. Does it concern you, this
19 paragraph? Does it concern you if it's true?
20 MR. DELINSKY: Object to form.
21 Objection, asked and answered.
22 A. CVS is -- we aim to comply with laws,
23 and so I -- you know, generally speaking that's
24 how we operate, so I would be concerned if we

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1 were not, but I have no information to lead me
2 to believe one way or another.
3 BY MR. ELSNER:
4 Q. But this would indicate that, in fact,
5 in this instance CVS was not complying with
6 federal regulations, that they were, in fact,
7 selling drugs, oxycodone in particular, to
8 patients that they knew were not in real pain,
9 correct?
10 MR. DELINSKY: Object to form.
11 A. I wasn't involved in the interviews.
12 I don't know anything about the interviews, so I
13 can't really form an opinion on that.
14 BY MR. ELSNER:
15 Q. If you turn to Page 57 -- sorry,
16 Page 24, Paragraph 57. There's a heading just
17 above that paragraph that says the "DEA Issues
18 Immediate Suspension Orders for CVS 219 and CVS
19 5195," correct?
20 A. Just above that paragraph, yes, I see
21 that.
22 Q. And then it says that "Through my
23 training and experience" -- and this is Joseph
24 Rannazzisi's declaration again -- "as both a law

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1 enforcement officer and as a licensed
 2 pharmacist, I believe that CVS 219's and CVS
 3 5195's DEA registration to handle and distribute
 4 any type of controlled substance poses an
 5 imminent danger to the public health and
 6 safety."
 7 Did I read that correctly?
 8 A. Yes, you read it correctly.
 9 Q. Were you aware as president of Holiday
 10 CVS at this time that the DEA had determined
 11 that a suspension order should be issued because
 12 these two CVS stores posed an imminent danger to
 13 public health and safety?
 14 MR. DELINSKY: Object to form.
 15 A. I was not involved in this whole
 16 situation, and we're kind of picking and
 17 choosing paragraphs in a very long document, so
 18 that is what it says here.
 19 BY MR. ELSNER:
 20 Q. And you were not made aware of that as
 21 the president of Holiday CVS, the president of
 22 these two stores?
 23 MR. DELINSKY: Object to form.
 24 A. I was made aware of it because I'm an

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1 attorney in the legal department, but not due to
 2 my role as president of Holiday.
 3 MR. ELSNER: Okay. I'm going to mark
 4 this next document as the next exhibit, which is
 5 MR 68, and it's Exhibit 14 to the deposition.
 6 (Whereupon, CVS-Moffatt-14 was marked
 7 for identification.)
 8 BY MR. ELSNER:
 9 Q. This is CVS-60796 through 60804. This
 10 is a settlement agreement, is it not, between
 11 CVS Health and the -- and its subsidiaries and
 12 the DEA related to the DEA's investigation of
 13 stores 219 and 5195 in Sanford, Florida,
 14 correct?
 15 A. Yes, that appears to be correct.
 16 Q. And it was the DEA's position, the US
 17 government's position that CVS had failed in its
 18 responsibilities under the Controlled Substances
 19 Act, correct?
 20 MR. DELINSKY: Object to form.
 21 A. I was not involved in this settlement
 22 agreement, so I mean, I'd have to go through the
 23 whole thing to agree with your characterization
 24 of what's in here.

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1 BY MR. ELSNER:
 2 Q. Well, if we turn to Page 3 of the
 3 settlement agreement, under paragraph I, it
 4 reads the "DEA revoked the registrations issued
 5 to CVS stores 219 and 5195 in an order published
 6 on October 12, 2012" in the Federal Register.
 7 The "DEA revoked the registrations of the DEA
 8 stores...based, among other things, on their
 9 failure to fulfill their corresponding
 10 responsibilities under 21 CFR 1306.04," which is
 11 the Controlled Substances Act.
 12 Are you aware of that?
 13 A. I was not involved in putting this
 14 together or anything like that. I was generally
 15 aware of the actions taken against the two
 16 stores.
 17 Q. Okay. And were you aware in
 18 Paragraph 12 that CVS -- on Page 3, that "CVS
 19 acknowledges that certain CVS/pharmacy retail
 20 stores did dispense certain controlled
 21 substances in a manner not fully consistent with
 22 their compliance obligations under the CSA and
 23 its implementing regulations"?
 24 A. I see that. It's paragraph K.

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1 Q. Yes.
 2 A. Yes.
 3 Q. So, in fact, CVS agreed, did it not,
 4 that there were certain violations of the
 5 Controlled Substances Act in these two stores in
 6 Florida?
 7 MR. DELINSKY: Object to form.
 8 A. It says CVS acknowledges that certain
 9 stores dispensed controlled substances in a
 10 manner not fully consistent with their
 11 compliance obligations under the CSA and its
 12 implementing regulations.
 13 BY MR. ELSNER:
 14 Q. Right.
 15 A. That's what it says, yes.
 16 Q. And if we turn to Page 4, it says,
 17 small Roman Numeral iii in the middle of the
 18 page, these are the determinations or findings
 19 by the DEA, it says "Dispensing, on or before
 20 the Effective Date of this Agreement, by the
 21 Florida CVS/pharmacy retail store of controlled
 22 substances to individuals CVS knew or should
 23 have known were diverting controlled
 24 substances."

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| <p style="text-align: right;">Page 178</p> <p>1 Were you aware that that was the 2 determination by the DEA? 3 A. Again, I was not involved in this 4 settlement agreement at all. You're reading the 5 paragraph correctly. 6 Q. Okay. And also that the DEA 7 determined that there was dispensing "by any 8 Florida CVS/pharmacy retail store of controlled 9 substances pursuant to prescriptions issued by 10 physicians who did not have current, valid DEA 11 registrations." 12 Were you aware that that was a 13 component of the DEA's determinations in its 14 investigation of these two CVS stores? 15 MR. DELINSKY: I object to the form of 16 the question. These paragraphs define the 17 covered conduct for the scope of the release. 18 MR. ELSNER: Okay. Well, the reason 19 they're getting a release on that conduct is 20 because it was the finding of the DEA, and it 21 didn't want subject him to another fine and a 22 continued investigation. 23 MR. DELINSKY: Well, but this section 24 does not set forth the basis of the fines. It</p> | <p style="text-align: right;">Page 180</p> <p>1 \$22 million in settlement of this investigation? 2 A. Yes, I was aware of that. 3 Q. And who paid the fine? Was it CVS 4 Holiday, was it CVS Pharmacy? 5 A. I don't know. I wasn't involved in 6 the payment process. 7 Q. Well, you're the president of CVS 8 Holiday at this time. Do you know whether CVS 9 Holiday paid the fine? 10 MR. DELINSKY: Object to the form of 11 the question. 12 A. I'm not involved in the payment 13 process. The movement of money between the 14 various subsidiaries, I'm not involved in that 15 at all, so I don't know which entity would have 16 been involved in the payment. 17 BY MR. ELSNER: 18 Q. Who would know? 19 A. I'm not sure. Someone in our finance 20 group, I would think. 21 Q. There's no one in the legal department 22 that would know who is responsible for paying 23 the fine? 24 MR. DELINSKY: Object to form.</p> |
| <p style="text-align: right;">Page 179</p> <p>1 sets forth the basis for the release. So 2 there's an apples and oranges problem here. 3 MR. ELSNER: I don't think there is. 4 BY MR. ELSNER: 5 Q. But generally were you aware that the 6 DEA had determined that these two CVS stores had 7 dispensed and/or filled prescriptions for 8 physicians that didn't have valid DEA licenses? 9 MR. DELINSKY: Object to form. 10 A. I was not involved in this in any way. 11 There were other attorneys involved. So I don't 12 know that that was a finding -- 13 BY MR. ELSNER: 14 Q. Were you -- 15 A. -- for any Florida CVS/pharmacy retail 16 store, so I don't know if it's talking about 17 these two particular stores or what. 18 Q. If you turn to Page 6 of the 19 settlement agreement, in Paragraph 3, CVS agreed 20 to pay the DEA \$22 million in settlement of this 21 investigation of diversion of controlled 22 substances, correct? 23 A. Yes, that's what Paragraph 3 says. 24 Q. Were you aware that CVS agreed to pay</p> | <p style="text-align: right;">Page 181</p> <p>1 A. I would think the attorneys that were 2 involved in the negotiation of the settlement 3 would have told -- or would have been involved 4 in telling the finance department, this is the 5 settlement. I think it's signed by CVS 6 Pharmacy, Inc., or maybe that's just -- yeah, on 7 behalf of CVS Pharmacy, Inc. So I'm not sure if 8 it came from CVS Pharmacy, Inc. or if it came 9 from Holiday. 10 Q. Would you review financial statements 11 from the various entities that you were 12 president of, including CVS Holiday? 13 MR. DELINSKY: Object to form. 14 A. No. We don't have separate financial 15 statements for the operating subsidiaries. 16 BY MR. ELSNER: 17 Q. Okay. So there's no financial 18 statements with respect to the distribution 19 centers or for these entities like CVS Holiday, 20 is that right? 21 A. There are -- there is financial 22 information that is kept. We don't -- we don't 23 produce or file the financial statements for the 24 underlying entities. The ones that we file are</p> |

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| <p style="text-align: right;">Page 182</p> <p>1 just for the public company.</p> <p>2 Q. I understand there's public filing</p> <p>3 obligations. But as the president of CVS</p> <p>4 Holiday, would you review the financial</p> <p>5 information from the CVS pharmacies that were</p> <p>6 part of that group?</p> <p>7 MR. DELINSKY: Object to form.</p> <p>8 A. Others at CVS in financial reporting</p> <p>9 group would be responsible for entity level</p> <p>10 financial information, and they would review.</p> <p>11 Our tax department would also be involved in</p> <p>12 that.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. But as the president of the --</p> <p>15 A. I did not.</p> <p>16 Q. You did not. Okay.</p> <p>17 And this agreement, this settlement</p> <p>18 agreement with the DEA was signed by Elizabeth</p> <p>19 Ferguson, the senior vice president, assistant</p> <p>20 general counsel for CVS Pharmacy on December 18,</p> <p>21 2014, is that right?</p> <p>22 A. That's what Page 9 says, yes.</p> <p>23 Q. Do you know whether CVS ever issued</p> <p>24 any warning or instruction or guidance to the</p> | <p style="text-align: right;">Page 184</p> <p>1 whole process.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. So you don't know one way or another.</p> <p>4 It's possible that no information was sent,</p> <p>5 right?</p> <p>6 A. It -- either would be possible, but I</p> <p>7 wouldn't have knowledge to know one way or the</p> <p>8 other.</p> <p>9 Q. Cardinal is one of the distributors of</p> <p>10 oxycodone and other controlled substances to</p> <p>11 store 219 in Florida, is that right?</p> <p>12 A. I'm not involved in the where drugs</p> <p>13 come from process, so I can't say one way or</p> <p>14 another. I know Cardinal was one of our primary</p> <p>15 wholesalers.</p> <p>16 Q. Okay. And do you know whether</p> <p>17 Cardinal was one of the primary wholesalers for</p> <p>18 your pharmacies that you were president of in</p> <p>19 Florida pharmacy 219?</p> <p>20 MR. DELINSKY: Object to form.</p> <p>21 A. I'm not involved in the process, so I</p> <p>22 don't know which wholesalers would supply which</p> <p>23 stores.</p> <p>24 MR. ELSNER: I'm going to mark this</p> |
| <p style="text-align: right;">Page 183</p> <p>1 Indianapolis distribution center that you were</p> <p>2 the president of concerning the investigation of</p> <p>3 pharmacies in Florida?</p> <p>4 MR. DELINSKY: Object to form.</p> <p>5 A. Others that are involved in operations</p> <p>6 would have been, you know, involved in that sort</p> <p>7 of communication. I was not.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Do you know one way or the other</p> <p>10 whether that took place?</p> <p>11 MR. DELINSKY: Object to form. Asked</p> <p>12 and answered.</p> <p>13 A. Others at CVS would be involved in</p> <p>14 that. I don't know one way or another.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. I mean, they might be involved that it</p> <p>17 took place, but I'm asking --</p> <p>18 A. Yes.</p> <p>19 Q. -- do you know that it took place or</p> <p>20 not?</p> <p>21 MR. DELINSKY: Objection to form.</p> <p>22 Asked and answered.</p> <p>23 A. I don't -- others at CVS were</p> <p>24 responsible, so I wouldn't be involved in that</p> | <p style="text-align: right;">Page 185</p> <p>1 next document as Exhibit 15.</p> <p>2 (Whereupon, CVS-Moffatt-15 was marked</p> <p>3 for identification.)</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. This is the Government's Prehearing</p> <p>6 Statement in a matter related to Cardinal Health</p> <p>7 at the Drug Enforcement Administration.</p> <p>8 Were you aware that the government had</p> <p>9 taken and prepared a statement regarding</p> <p>10 Cardinal's activities with respect to store 219</p> <p>11 in Florida?</p> <p>12 MR. DAWSON: Object to the form.</p> <p>13 A. I was generally aware that there were</p> <p>14 actions taken against Cardinal and others in</p> <p>15 Florida.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. What were --</p> <p>18 A. Walgreen's, for example.</p> <p>19 Q. What do you know about what actions</p> <p>20 were taken against Cardinal in Florida?</p> <p>21 A. It wasn't my area of focus, so I</p> <p>22 don't -- I wasn't following it. It was more,</p> <p>23 you know, Betsy Ferguson and her group that</p> <p>24 would have been involved in the matter. I was</p> |

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| <p style="text-align: right;">Page 186</p> <p>1 just generally aware based on my role as an 2 attorney. 3 Q. If you turn to Page 17 of this 4 document. And this is the government's brief in 5 the Cardinal matter, just to give you a frame of 6 reference. And it lists in the second full 7 paragraph toward the bottom of the page, it 8 reads "CVS 219 and 5195." Do you see where we 9 are? 10 A. Yes. 11 Q. It reads "CVS 219 and 5195, two of 12 Respondent's" -- that's Cardinal's -- "top four 13 retail pharmacy customers, are located in 14 Sanford, Florida." 15 And you're aware that those two 16 pharmacies are in Sanford, Florida, is that 17 right? 18 MR. DELINSKY: Object to form. 19 A. Yes, I'm aware that 219 and 5195 are 20 in Sanford. 21 BY MR. ELSNER: 22 Q. And you're the president of Holiday 23 CVS, as we established, and the president of 24 these two stores, is that right?</p> | <p style="text-align: right;">Page 188</p> <p>1 "distribution of oxycodone could supply every 2 resident of Sanford, Florida with approximately 3 58.6 dosage units of oxycodone," is that 4 correct? 5 MR. DAWSON: Object to the form. 6 A. That's what this sentence says. 7 BY MR. ELSNER: 8 Q. And if you go down to the next 9 paragraph, in the second sentence it reads "Of 10 this volume, Respondent," Cardinal, "shipped 11 3,012,500 dosage units (96 percent) to the two 12 CVS stores named in the ISO," CVS stores 219 and 13 5195. 14 Were you aware of that? 15 A. This is the first time I'm reading 16 this document. 17 Q. Okay. 18 A. So first time I've seen this sentence. 19 Q. It goes on to say that "This volume 20 dwarfs the...volume purchased by other chain 21 drugstores in Sanford, such as Walgreen's." 22 Were you aware that there was a 23 comparison done by the government of the CVS 24 stores' purchases of oxycodone to other</p> |
| <p style="text-align: right;">Page 187</p> <p>1 MR. DELINSKY: Object to form. 2 A. I'm president of the entity, yes. 3 BY MR. ELSNER: 4 Q. Okay. And have you ever visited those 5 stores? 6 A. I have not. 7 Q. It reads that "During" -- hold on one 8 second. It reads that Cardinal supplied, it 9 says Respondent, but during 2019, Respondent, or 10 Cardinal supplied 6 of the 16 pharmacies with 11 DEA registrations located within the city limits 12 of Sanford, Florida with approximately over 3 13 million dosage units of oxycodone. 14 Did I read that correctly? 15 A. Yes, you did. 16 Q. Okay. And that according to the 2010 17 US Census Bureau fact sheets, Sanford, Florida 18 had a population of only 53,570 people, is that 19 right? 20 MR. DAWSON: Object to the form. 21 A. That's what the sentence says, yes. 22 BY MR. ELSNER: 23 Q. And it says that "Based on these 24 numbers, Respondent's, or Cardinal's,</p> | <p style="text-align: right;">Page 189</p> <p>1 similarly situated pharmacies in the same 2 geographic area? 3 MR. DELINSKY: Object to form. 4 MR. DAWSON: Object to the form. And 5 object to the form of the prior question as 6 well. 7 A. I wasn't involved in this at all, so 8 I'm not aware of any of these, any of this 9 information. 10 BY MR. ELSNER: 11 Q. Does it concern you as the president 12 of CVS Holiday that there were over 3 million 13 dosage units supplied to your two CVS stores in 14 Sanford, Florida, accounting -- or a city that 15 had a population of 53,000 people? 16 MR. DAWSON: Object to the form. 17 A. There are others that are involved in 18 the operations of the store and compliance, so 19 that would be their responsibility. I was not 20 involved in how many dosage units -- I don't 21 even know what a dosage unit is, but how many 22 units went to particular stores. 23 BY MR. ELSNER: 24 Q. And we earlier discussed that the DEA</p> |

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| <p>Page 190</p> <p>1 had expressed concern about the CVS distribution 2 center in Indiana that you're also president of, 3 that that distribution center was supplying very 4 high doses of hydrocodone products to CVS stores 5 in towns with small populations, is that right? 6 MR. DELINSKY: Object to form. 7 A. I recall seeing that in the earlier 8 document, but again, I don't know anything about 9 the stores that are involved, anything about 10 their volumes in general, or anything like that. 11 BY MR. ELSNER: 12 Q. If you go down on Page 18 to the first 13 full paragraph that starts "Publix Pharmacy." 14 Do you see where I'm at? 15 A. Yes. 16 Q. It says this Publix Pharmacy, located 17 in Sanford, Florida, is about two miles from 18 CVS -- it says "of" -- from CVS 5195 store, and 19 that that Publix Pharmacy purchased only 20 25,700 units of oxycodone. But the CVS store 21 5195, which is two miles away, purchased 22 1.2 million dosage units of oxycodone. 23 Can you explain to me why that would 24 be the case?</p> <p>Page 191</p> <p>1 MR. DAWSON: Object to the form. 2 MR. DELINSKY: Object to the form. 3 A. Others at CVS were responsible for 4 operations and so forth, but different stores 5 have different volumes of all drugs, so I don't 6 know enough about the -- this particular CVS. I 7 don't know anything about Publix. 8 BY MR. ELSNER: 9 Q. That seems wildly disproportionate, 10 doesn't it? 11 MR. DAWSON: Object to the form. 12 A. I don't know anything about either the 13 CVS or the Publix. Two miles is a very long 14 distance. You know, as people know from looking 15 around, CVS can have stores much closer than two 16 miles apart. So it can be a big difference even 17 being two miles apart. There's a could be a 18 difference in a store located within a grocery 19 store, which a Publix would be, as opposed to a 20 stand-alone CVS store. 21 BY MR. ELSNER: 22 Q. Well, the DEA thought it was 23 concerning, didn't it? 24 MR. DELINSKY: Object to form.</p> | <p>Page 192</p> <p>1 A. I have no basis to determine what the 2 DEA thought about something. 3 BY MR. ELSNER: 4 Q. Well, that's what this brief says, 5 right? 6 MR. DELINSKY: Object to form. 7 MR. DAWSON: Object to form. 8 A. I don't know. It's a very long brief. 9 I don't know what it says. 10 BY MR. ELSNER: 11 Q. If you turn to Page 25, there's a 12 paragraph -- there's a section heading "CVS 13 219." 14 Do you see where I'm at? 15 A. Yes. 16 Q. It says that apparently there was an 17 investigator for the government who was prepared 18 to testify related to an investigation of CVS 19 219, and according to her analysis "between" -- 20 and this is in the third line -- "between 21 January 1, 2010 and October 18, 2011, 42 percent 22 of the 30-milligram oxycodone prescriptions at 23 CVS 219 were paid for in cash, using no 24 insurance to pay for the medication."</p> <p>Page 193</p> <p>1 Did I read that correctly? 2 A. Yes, that's what that -- 3 Q. Are you aware that payments of cash 4 for opioids could be a red flag or an indicator 5 of diversion? 6 MR. DELINSKY: Object to form. 7 A. Others at CVS are responsible for that 8 sort of information. As a corporate lawyer I 9 was not involved in that sort of information. 10 BY MR. ELSNER: 11 Q. Do you know otherwise just generally 12 that payments in cash for an opioid could be a 13 red flag for diversion of that opioid? 14 MR. DELINSKY: Object to form. 15 A. Any information I would have gotten 16 about that would have been through an attorney 17 communication, but from one of the attorneys 18 that works on this sort of matter. 19 BY MR. ELSNER: 20 Q. And you believe that if a CVS employee 21 told you that payments were being made in cash 22 and that was a red flag under their standards 23 that that would invoke a privilege? 24 MR. DELINSKY: Object to form.</p> |
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| <p style="text-align: right;">Page 194</p> <p>1 A. What I said was other attorneys at CVS 2 handled this sort of matter and I may have 3 learned something through talking to other 4 attorneys about -- well, not about a Cardinal 5 matter necessarily, I don't know -- 6 BY MR. ELSNER: 7 Q. Well, this is talking about a CVS 8 store 219, so it is a CVS matter. It's also a 9 Cardinal matter, but it's a CVS matter in the 10 sense this is a CVS Pharmacy and in that CVS 11 Pharmacy they were dispensing oxycodone 12 30-milligram tablets. 42 percent of the people 13 who got those were paying cash for those with no 14 insurance. And you were not aware of that, is 15 that your testimony? 16 MR. DELINSKY: I object to the form of 17 the question. 18 And, Mr. Elsner, you just -- I ask 19 that you not interrupt the witness before he's 20 fully completed his answers. It's happened a 21 handful of times in the last hour or so. 22 A. So others at CVS would have been 23 involved in this sort of matter. I was not. 24 BY MR. ELSNER:</p> | <p style="text-align: right;">Page 196</p> <p>1 the CVS store 219, that 42 percent of their 2 customers were paying in cash. Can you explain 3 the anomaly? 4 MR. DELINSKY: Object to form. 5 MR. DAWSON: Object to form. 6 A. Others at CVS would be responsible for 7 information about these stores, and I don't know 8 enough about the stores in question or, you 9 know, this is -- you're talking about one 10 particular store in Florida versus -- I don't 11 know what the 6.9 percent refers to, different 12 years, so I don't know that it's apples to 13 apples. 14 BY MR. ELSNER: 15 Q. Did you know that Cardinal had asked 16 CVS for information concerning the sales of 17 oxycodone 30-milligram tablets from store 219? 18 MR. DAWSON: Object to the form. 19 A. I would not be involved in that sort 20 of communication, so others at CVS would have 21 been involved in that. 22 BY MR. ELSNER: 23 Q. So you never became aware of that? 24 A. Others at CVS would have been</p> |
| <p style="text-align: right;">Page 195</p> <p>1 Q. It says in the next sentence that at 2 this particular location, this is CVS 219 of 3 which you were the president of the entity 4 controlling that, that the pharmacy charged \$239 5 for a prescription of 30-milligram strength 6 oxycodone. 7 Did I read that correctly? 8 A. Well, a prescription of 180. You 9 skipped the 180 part. 10 Q. Okay. 11 A. But that's what that says, yes, in 12 terms of the price. 13 Q. And do you know whether that would be 14 a trigger for -- or a red flag for diversion for 15 an opioid, to have a customer pay almost \$240 to 16 fill a prescription in cash? 17 MR. DELINSKY: Object to form. 18 A. This is not my area. I'm not aware of 19 what's considered a red flag and what isn't. 20 BY MR. ELSNER: 21 Q. The government writes that based on 22 data provided by IMS that the average for the 23 payments of prescription in cash is about 24 6.9 percent at the end of that paragraph, but</p> | <p style="text-align: right;">Page 197</p> <p>1 involved, assuming it happened. I don't know. 2 Q. Did you know that Cardinal had 3 requested patient information for store 219 4 related to the sales and the dispensing of these 5 drugs and that CVS refused to provide that 6 information to Cardinal? 7 MR. DAWSON: Object to the form. 8 A. Again, this is not my area. I would 9 not be involved in any such communications. 10 BY MR. ELSNER: 11 Q. Well, Cardinal was requesting the 12 information so that it could conduct its own due 13 diligence of the sales it was making to CVS 14 pharmacies, including that pharmacy 219, and CVS 15 was refusing to provide that data to Cardinal to 16 conduct that investigation. Can you explain 17 why? 18 MR. DAWSON: Object to the form. 19 A. This is not my area. I'm not involved 20 in that sort of communications back and forth, 21 so I don't have any basis for responding to 22 that. 23 BY MR. ELSNER: 24 Q. Were you aware that there was an</p> |

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| <p style="text-align: right;">Page 198</p> <p>1 agreement between CVS and Cardinal that CVS 2 would not provide this kind of data to Cardinal? 3 MR. DAWSON: Object to the form. 4 A. I was not involved in this in any way, 5 so I wouldn't -- I don't know one way or 6 another. I have no basis to opine on that. 7 BY MR. ELSNER: 8 Q. Were you aware that a CVS employee 9 from store 219 informed CVS corporate who 10 informed Cardinal that the reason that there was 11 an oxycodone spike was because there was an 12 increased number of patients from pain clinics? 13 MR. DAWSON: Object to the form. 14 A. I wasn't involved in this process. 15 Others at CVS were involved, so I wouldn't be 16 involved in that sort of communication. 17 BY MR. ELSNER: 18 Q. Cardinal had also asked for a dosage 19 utilization report from CVS related to store 20 219, and CVS refused to provide that report. 21 Can you explain why? 22 MR. DAWSON: Object to the form. 23 A. Others would have been involved in 24 that sort of communication, and I have no basis</p> | <p style="text-align: right;">Page 200</p> <p>1 reporter, I'm sorry I forgot your name. Are you 2 picking up on -- 3 THE REPORTER: Yes. 4 MR. DELINSKY: -- the objections to 5 forms? Thank you. 6 MR. ELSNER: I'm going to mark this 7 next exhibit, which is Exhibit 16. This is MR 8 70. 9 (Whereupon, CVS-Moffatt-16 was marked 10 for identification.) 11 BY MR. ELSNER: 12 Q. Were you aware the DEA was conducting 13 an investigation of CVS pharmacies in Maryland? 14 A. Others were handling this more 15 directly. I was generally aware based on my 16 role as an attorney. 17 Q. The investigation concerned potential 18 violations of the Controlled Substances Act, and 19 in particular it related to CVS's obligations 20 with respect to corresponding responsibility 21 between the pharmacist and the physician. Were 22 you aware of that? 23 MR. DELINSKY: Object to form. 24 A. Others were handling this more</p> |
| <p style="text-align: right;">Page 199</p> <p>1 to opine either way. 2 BY MR. ELSNER: 3 Q. Cardinal's general practice when it 4 found anomalies like this, in investigations 5 like this, and suspicion of diversion was to 6 actually do a site visit to the pharmacy, do an 7 inspection and interview people and understand 8 why it was that they were purchasing such large 9 amounts of opioids, but they didn't do a site 10 visit to CVS stores. As the president of CVS 11 Holiday, do you know why CVS wouldn't -- did CVS 12 have a policy not to permit them to conduct such 13 an investigation? 14 MR. DAWSON: Object to the form. 15 A. I was not involved in that whole 16 process, so I have no basis to give a view on 17 that. 18 BY MR. ELSNER: 19 Q. Did any -- do you have any 20 understanding why CVS would prevent that? 21 MR. DAWSON: Object to the form. 22 A. I had no involvement in the process. 23 Others at CVS would have been involved in that. 24 MR. DELINSKY: Excuse me, court</p> | <p style="text-align: right;">Page 201</p> <p>1 directly. I was generally aware of that based 2 on my role as an attorney. 3 BY MR. ELSNER: 4 Q. If you turn to -- what I've placed 5 before you is actually a settlement agreement 6 which was entered into by CVS Pharmacy, Inc. 7 with the DEA related to the DEA's investigation 8 in Maryland, is that right? 9 A. Yes, that's what this appears to be. 10 Q. Okay. And if you turn to Page 2 of 11 the settlement agreement under paragraph F, it 12 reads that "The United States contends that CVS 13 failed to fulfill its corresponding 14 responsibilities under 21 CFR 1306.04," which is 15 the Controlled Substances Act, and "is subject 16 to civil penalties." 17 Did I read that correctly? 18 A. You did read that correctly. 19 Q. Okay. And in paragraph E it states 20 that "CVS acknowledges that it has a 21 corresponding responsibility to dispense only 22 those prescriptions that have been issued for a 23 legitimate medical purpose by an individual 24 practitioner acting in the usual course of</p> |

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| <p style="text-align: right;">Page 202</p> <p>1 professional practice and that knowingly filling 2 a prescription not in the usual course of 3 professional treatment or in legitimate and 4 authorized research subjects CVS to penalties 5 under the CSA," or the Controlled Substances 6 Act, correct? 7 A. Yes, you read that correctly. 8 Q. Were you aware that CVS acknowledged 9 in paragraph G that certain CVS Pharmacy retail 10 stores in Maryland did dispense certain 11 controlled substances in a manner not fully 12 consistent with their compliance obligations 13 under the CSA? 14 A. You read that portion of the paragraph 15 G correctly as well. 16 Q. Were you aware that CVS had made that 17 acknowledgment in the settlement agreement? 18 A. I was not involved in putting this 19 settlement agreement together, and so I wouldn't 20 have been involved in the wording here. 21 Q. If you turn to Page 3, it states -- 22 Page 3, Paragraph 3 at the very bottom, it 23 states that CVS will pay the United States a sum 24 of \$8 million in settlement, is that correct?</p> | <p style="text-align: right;">Page 204</p> <p>1 BY MR. ELSNER: 2 Q. Okay. But CVS agreed to it and they 3 signed -- Betsy Ferguson on behalf of CVS 4 Pharmacy, Inc. executed the settlement agreement 5 in February of 2016, correct? 6 A. Yes. 7 MR. DELINSKY: Could we take a quick 8 five minutes? 9 MR. ELSNER: Sure. Absolutely. 10 THE VIDEOGRAPHER: We're going off the 11 record at 12:16 p.m. 12 (Whereupon, a recess was taken.) 13 THE VIDEOGRAPHER: We're back on the 14 record at 12:24 p.m. 15 BY MR. ELSNER: 16 Q. Mr. Moffatt, were you a secretary or 17 president of any of the pharmacies in Maryland 18 that were subject of the DEA investigation and 19 CVS settlement with the DEA? 20 MR. DELINSKY: Object to form. 21 A. I was president of the entity that 22 operated those pharmacies, yes. 23 BY MR. ELSNER: 24 Q. Were you aware that the DEA also</p> |
| <p style="text-align: right;">Page 203</p> <p>1 A. Yes, that's what Paragraph 3 says. 2 Q. Were you aware that CVS had entered 3 into a settlement with the DEA related to 4 violations of corresponding responsibilities of 5 its CVS pharmacies in Maryland for an amount of 6 \$8 million? 7 MR. DELINSKY: Object to form. 8 A. I wasn't involved in the whole 9 process, but that appears to be what this says. 10 It also says that it was done to avoid the 11 delay, expense, and inconvenience and 12 uncertainty of litigation. So it's not 13 necessarily, you know, an admission, but... 14 BY MR. ELSNER: 15 Q. The DEA had reached certain findings, 16 and you could have fought those findings in 17 court, but rather than doing that you entered 18 into a settlement in the amount of \$8 million, 19 is that right? 20 MR. DELINSKY: Object to form. 21 A. Again, there's another attorney, or 22 other attorneys would have been responsible for 23 making that sort of decision, and the reasons 24 behind it. I'm not involved in that process.</p> | <p style="text-align: right;">Page 205</p> <p>1 conducted an investigation of certain CVS 2 pharmacies in Alabama? 3 MR. DELINSKY: Object to form. 4 A. Others at CVS are responsible for all 5 of those sort of matters, so I don't recall 6 specifically information about Alabama. 7 BY MR. ELSNER: 8 Q. Let me show you Moffatt Exhibit 17, 9 which is a settlement agreement between CVS and 10 the DEA related to entities in Alabama. 11 (Whereupon, CVS-Moffatt-17 was marked 12 for identification.) 13 BY MR. ELSNER: 14 Q. If I could -- the DEA was 15 investigating certain pharmacies in Alabama, 16 particularly in Calera, Alabama, for certain 17 recordkeeping and reporting violations of 18 controlled substances, regulations in place to 19 guard against theft and diversion. This is 20 paragraph F on Page 2. Do you see where I'm at? 21 A. Yes. 22 MR. DELINSKY: Objection. 23 A. I see paragraph F. 24 BY MR. ELSNER:</p> |

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1 Q. And then in paragraph G on Page 2 that
2 as a result of the DEA's investigation and its
3 inspection of this CVS store in Calera, Alabama,
4 that the United States contends that on or
5 before the effective date of the agreement CVS
6 Calera violated the CSA, the Controlled
7 Substances Act, and then it lists three
8 violations that the DEA believed exists, is that
9 correct?

10 MR. DELINSKY: Object to form.

11 A. I was not involved in the preparation
12 of this, but that is what Paragraph G says.

13 BY MR. ELSNER:

14 Q. On Page 3 of the agreement under
15 "Terms and Conditions," CVS agreed to pay a
16 \$1 million sum in settlement of this contention
17 and these alleged violations, is that right?

18 MR. DELINSKY: Object to form.

19 A. I wasn't involved in this settlement
20 or anything, but it appears that that's what
21 Paragraph 1 on Page 3 says.

22 BY MR. ELSNER:

23 Q. Okay. And on Page 8 of the agreement,
24 CVS Pharmacy, Inc. agreed to the settlement

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1 terms in July of 2018, is that right?

2 A. What page were you on?

3 Q. Page 8, the very last page of the
4 agreement.

5 A. Yes, yes, signed in July.

6 Q. Signed by Betsy Ferguson again, is
7 that right?

8 A. And John Gilbert, our outside
9 attorney.

10 Q. Okay.

11 A. Who is at Hyman, Phelps.

12 Q. Another question.

13 Were you the president or secretary or
14 treasurer or officer of this Alabama CVS store?

15 MR. DELINSKY: Object to form.

16 A. I believe I was president of the
17 entity that operated the Alabama CVS pharmacies.

18 BY MR. ELSNER:

19 Q. And what entity is that?

20 A. CVS Alabama, LLC, I believe.

21 Q. What was the entity in Maryland that
22 you were the president of that was related to
23 the CVS stores under investigation there by the
24 DEA?

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1 A. That would have been, I believe, CVS
2 Maryland, LLC.

3 Q. Okay. Do you have a list of all of
4 the entities that you serve as president or
5 secretary of?

6 A. I could generate one. I don't have
7 one with me or anything like that.

8 Q. It's not in your backpack?

9 A. No.

10 Q. But you could provide that?

11 MR. DELINSKY: Object to form.

12 A. We could create a list if one was
13 needed, yeah.

14 BY MR. ELSNER:

15 Q. Okay. The DEA also conducted an
16 investigation of CVS stores in Oklahoma, is that
17 right?

18 A. Other people would have been involved
19 in particular investigations. I believe there
20 was one in Oklahoma, yes.

21 Q. I'm going to show you Exhibit 18.
22 (Whereupon, CVS-Moffatt-18 was marked
23 for identification.)

24 BY MR. ELSNER:

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1 Q. This is Motley Rice 224. This is a
2 settlement agreement between CVS and the DEA
3 related to a DEA investigation, is that right?

4 A. Yes, that's what it appears to say.

5 Q. And in fact, this particular
6 settlement agreement, you actually signed and
7 executed the settlement. Your signature -- is
8 that your signature on Page 7?

9 A. Yes, my signature and initials at the
10 top of Page 7.

11 Q. I'm going to have you turn to Page 829
12 of the document, which is -- sorry. We've
13 already done that. Hold on one second. If we
14 turn to -- sorry, hold on one second. Turn to
15 Page 2, Paragraph 11 at the bottom of Page 2.
16 This is MR 224. Page 2, 60823, Paragraph 11.

17 A. Yes, I see it.

18 Q. And it says that the US -- "United
19 States alleges that the following conduct by
20 CVS/pharmacy retail stores in Oklahoma and
21 elsewhere for the relevant time period under
22 circumstances that violate the CSA and the
23 regulations promulgated thereunder," and then it
24 has a list of various things that the CVS

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| <p>Page 210</p> <p>1 pharmacies in Oklahoma on the top of Page 3, 2 Roman Numeral little i, "filling prescriptions 3 for certain prescribers whose DEA registration 4 numbers were not current or valid." That was 5 one of the DEA's determinations, is that right? 6 MR. DELINSKY: Object to form. 7 A. That's one of the allegations. 8 BY MR. ELSNER: 9 Q. Allegations which the DEA determined 10 that violate the CSA, is that right? 11 MR. DELINSKY: Object to form. 12 A. It says that the United States alleges 13 this conduct under circumstances that violate 14 the CSA, that's their characterization of the 15 conduct. 16 BY MR. ELSNER: 17 Q. Okay. And under little Roman Numeral 18 ii, it included "entering and maintaining 19 invalid DEA registration numbers on CVS 20 dispensing records for certain prescriptions," 21 is that right? 22 A. That's allegation in Romanette ii, 23 yes. 24 Q. And allegation under Roman Numeral</p> <p>Page 211</p> <p>1 iii, "entering and maintaining CVS dispensing 2 records including prescription vial labels that 3 identify a non-prescribing provider as the 4 prescribing provider for certain prescriptions." 5 Was that another allegation? 6 A. That is the third allegation here. 7 Q. Okay. And in settlement of these 8 allegations, CVS agreed to pay \$11 million to 9 the United States Government, is that right? 10 A. At Paragraph 15 it says \$11 million. 11 Again, I was not involved in the preparation of 12 this or any -- didn't take any part in this 13 settlement, so I'm not familiar with all the 14 circumstances described in here. 15 Q. Well, this -- 16 A. I signed it, but others would have 17 been involved in the entire matter and, you 18 know, would have brought this to me at the end. 19 Q. Okay. What was brought to you at the 20 end, and what did you consider when deciding to 21 execute this settlement agreement? 22 MR. DELINSKY: I object to the form of 23 the question. I also object to the question to 24 the extent it calls for attorney/client</p> | <p>Page 212</p> <p>1 information, privileged information and/or work 2 product. 3 To the extent answering would require 4 you to disclose that information, I instruct you 5 not to -- to say so and not to disclose the 6 information. 7 A. It would have been brought to me by 8 the attorney that was working on this, and our 9 communication as to what was in the document 10 would have been all privileged. 11 BY MR. ELSNER: 12 Q. What were the findings -- or what were 13 the facts that the DEA presented to CVS to 14 inform CVS that its stores in Oklahoma had these 15 recordkeeping violations? 16 A. I had no involvement in the 17 particulars here. Other attorneys and other 18 individuals were involved. So I -- to the 19 extent I learned of any of that, it would have 20 been through our attorney and would have been 21 privileged. 22 Q. Well, I don't -- I take issue with 23 that. What I'm asking you is not whether CVS 24 determined those allegations would be true or</p> <p>Page 213</p> <p>1 false or whether it was a good settlement or a 2 bad settlement, I'm not asking you anything 3 about that. 4 What I'm asking you is, what facts did 5 the DEA present to CVS to indicate that there 6 had been violations of the Controlled Substances 7 Act at its CVS stores in Oklahoma? 8 MR. DELINSKY: Let's take this 9 step-by-step in light of the privilege issues. 10 Perhaps we could start by establishing whether 11 Mr. Moffatt recalls any of the facts. If he 12 doesn't recall, there's no privilege concern. 13 If he recalls, we can figure out how to go from 14 there in light of the privilege. 15 BY MR. ELSNER: 16 Q. Well, were you -- go ahead, why don't 17 you answer the question. 18 A. I don't recall specifics as to the 19 conduct in this matter. 20 Q. Okay. Before signing this agreement, 21 did you read it? 22 A. Yes, I did. 23 Q. Did you seek to determine what the 24 basis was for the DEA's allegations in</p> |
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| <p style="text-align: right;">Page 214</p> <p>1 Paragraph 11?</p> <p>2 MR. DELINSKY: Object to form.</p> <p>3 A. The other attorney or attorneys that</p> <p>4 were involved in the settlement, we would have</p> <p>5 had a discussion about it. I don't recall any</p> <p>6 particulars about it.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. Did they present to you -- and I just</p> <p>9 don't know, in the general practice, does the</p> <p>10 DEA provide you with a letter or a document</p> <p>11 explaining what the allegations are?</p> <p>12 A. I'm not involved in the whole process,</p> <p>13 so I'm not sure what was provided in this</p> <p>14 instance.</p> <p>15 Q. Did you review anything before you</p> <p>16 executed this document other than the settlement</p> <p>17 agreement itself?</p> <p>18 MR. DELINSKY: Object to form.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. Just yes or no.</p> <p>21 A. I don't -- I mean this was when, 2013?</p> <p>22 I don't recall what I would have reviewed or</p> <p>23 what discussions I would have had with the</p> <p>24 attorney that was involved in the matter.</p> | <p style="text-align: right;">Page 216</p> <p>1 A. So generally speaking, I would talk to</p> <p>2 the attorney that was involved in the matter and</p> <p>3 they would tell me what was involved, and I</p> <p>4 would read it.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Okay. You wouldn't do your own</p> <p>7 independent investigation of the alleged facts</p> <p>8 by the DEA?</p> <p>9 MR. DELINSKY: Object to form.</p> <p>10 A. I would not. We had other people that</p> <p>11 were responsible for both handling the matter</p> <p>12 and, you know, store operations and so forth, so</p> <p>13 I wouldn't do my own investigation.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. And would you review any of the</p> <p>16 letters or documentation provided by the DEA to</p> <p>17 CVS related to those investigations before you</p> <p>18 executed the document?</p> <p>19 MR. DELINSKY: Object to form.</p> <p>20 A. Not that I recall. Not typically.</p> <p>21 Typically it would be more a conversation with</p> <p>22 the attorney. I'm sure on some occasions I</p> <p>23 would have some of the background, either -- you</p> <p>24 know, sometimes I would be involved -- like in</p> |
| <p style="text-align: right;">Page 215</p> <p>1 Q. Okay. You signed this as president of</p> <p>2 Oklahoma CVS Pharmacy, is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And so you were the president of the</p> <p>5 entity which controlled the CVS pharmacies that</p> <p>6 were the subject of this investigation in</p> <p>7 Oklahoma, is that right?</p> <p>8 A. On that date I was, yes.</p> <p>9 Q. Okay. And prior to this date, did you</p> <p>10 serve as a treasurer or secretary of that</p> <p>11 entity?</p> <p>12 MR. DELINSKY: Object to form.</p> <p>13 A. I probably -- so the time period</p> <p>14 that's referred to below here in Paragraph 9,</p> <p>15 for example, talks about 2005 to 2011, during</p> <p>16 that time frame I would have been secretary</p> <p>17 probably.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Okay. And as a matter of general</p> <p>20 practice, regardless of this particular</p> <p>21 circumstances, what type of information would</p> <p>22 you review before you'd execute a settlement</p> <p>23 agreement like this?</p> <p>24 MR. DELINSKY: Object to form.</p> | <p style="text-align: right;">Page 217</p> <p>1 this case I would be in providing a declaration</p> <p>2 earlier in the matter, so I might have been</p> <p>3 involved then. For the signing of this</p> <p>4 particular settlement agreement, I think it</p> <p>5 would have just been a conversation with the</p> <p>6 attorneys.</p> <p>7 Q. Was this approved by anyone at CVS</p> <p>8 Pharmacy?</p> <p>9 A. It was signed by Josh Flum, who was</p> <p>10 senior vice president. I think at the time he</p> <p>11 was pharmacy operations. But again, it would be</p> <p>12 one attorney or group of attorneys. I'm not</p> <p>13 sure who handled it. They would have been</p> <p>14 handling the matter and would have brought it to</p> <p>15 both me and Josh to sign.</p> <p>16 Q. And who would those attorneys be at</p> <p>17 CVS?</p> <p>18 A. It varies, but Betsy Ferguson was head</p> <p>19 of the area, so it would be her and other</p> <p>20 attorneys in her group.</p> <p>21 Q. But in settlement of the Oklahoma</p> <p>22 investigation, CVS agreed to pay \$11 million,</p> <p>23 and you executed that settlement agreement on</p> <p>24 behalf of Oklahoma CVS, is that right?</p> |

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| <p style="text-align: right;">Page 218</p> <p>1 MR. DELINSKY: Object to form.</p> <p>2 A. That's correct. That's what</p> <p>3 Paragraph 15 says.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. There was also an investigation by the</p> <p>6 DEA of CVS stores in Rhode Island, is that</p> <p>7 right?</p> <p>8 MR. DELINSKY: Object to form.</p> <p>9 A. Others are involved in the various</p> <p>10 investigations. I'm generally aware that there</p> <p>11 was one in Rhode Island.</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. Okay. This is MR 225. This is</p> <p>14 Exhibit 19, Mr. Moffatt.</p> <p>15 (Whereupon, CVS-Moffatt-19 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. If you turn to Page 3 of 7 of the</p> <p>19 settlement agreement, paragraph I, it states,</p> <p>20 does it not, that "Between October 18, 2013 and</p> <p>21 March 2, 2015, the DEA Providence Resident</p> <p>22 Office conducted an investigation into CVS'</p> <p>23 dispensing of prescriptions from Rhode Island</p> <p>24 CVS/pharmacy retail stores." Is that right?</p> | <p style="text-align: right;">Page 220</p> <p>1 in Rhode Island CVS/pharmacy retail stores</p> <p>2 between the 3rd of March, 2010 and the date of</p> <p>3 this agreement," and then it goes on to list</p> <p>4 certain conduct which includes "Filling</p> <p>5 prescriptions with invalid prescriber DEA</p> <p>6 numbers, or under circumstances where the</p> <p>7 pharmacist filling the prescription knew or had</p> <p>8 reason to know that the prescription in question</p> <p>9 was invalid or unauthorized."</p> <p>10 Did I read that correctly?</p> <p>11 A. That's what Paragraph 1 says.</p> <p>12 Q. In Paragraph 2 for "Filling</p> <p>13 prescriptions for Schedule III controlled</p> <p>14 substances written by psychiatric nurse</p> <p>15 practitioners who were not authorized under</p> <p>16 state law or by the terms of their DEA</p> <p>17 registration to issue such prescriptions," is</p> <p>18 that right?</p> <p>19 A. That's what Paragraph 2 says.</p> <p>20 Q. Okay. And third that "Entering,</p> <p>21 creating, or maintaining CVS dispensing records,</p> <p>22 including prescription vial labels, in which the</p> <p>23 DEA registration numbers of non-prescribing</p> <p>24 practitioners, including non-prescribing</p> |
| <p style="text-align: right;">Page 219</p> <p>1 A. Yes, that's what paragraph I says.</p> <p>2 Q. Did you have a role with respect to</p> <p>3 CVS stores and pharmacies -- were you president</p> <p>4 or secretary or treasurer of that entity?</p> <p>5 MR. DELINSKY: Object to form.</p> <p>6 A. I would have been president of the</p> <p>7 Rhode Island entity, yes.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. And what is that entity called?</p> <p>10 A. I have to look it up, but something</p> <p>11 along the lines of Rhode Island CVS Pharmacy,</p> <p>12 LLC.</p> <p>13 Q. Do you know the name sitting here</p> <p>14 today?</p> <p>15 A. I don't. We have separate store</p> <p>16 entities in each state, sometimes multiple, so I</p> <p>17 don't know exactly the name of the entity.</p> <p>18 Sometimes it's just Rhode Island CVS, sometimes</p> <p>19 it's CVS Rhode Island, it varies a little bit.</p> <p>20 Q. In paragraph J it states that "The</p> <p>21 United States contends that it has certain civil</p> <p>22 and administrative claims under the Act," this</p> <p>23 is the Controlled Substances Act, and "it's</p> <p>24 implementing regulations based on CVS' conduct</p> | <p style="text-align: right;">Page 221</p> <p>1 practitioners who were not really authorized to</p> <p>2 prescribe the substances dispensed, were</p> <p>3 substituted for the DEA registration numbers of</p> <p>4 prescribing practitioners, in violation of the</p> <p>5 Controlled Substances Act," is that right?</p> <p>6 A. That's what Paragraph 3 says, yes.</p> <p>7 Q. Were you aware that the DEA had made</p> <p>8 such contentions with respect to CVS stores in</p> <p>9 Rhode Island based on your role as the president</p> <p>10 of the CVS entity in Rhode Island covering those</p> <p>11 stores?</p> <p>12 MR. DELINSKY: Object to form.</p> <p>13 A. No. Others at CVS would have been</p> <p>14 responsible for this sort of investigation, and</p> <p>15 for the settlement, so I was not involved in</p> <p>16 preparing this document or in the investigation.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. Okay. And CVS agreed to pay in</p> <p>19 settlement of these claims \$450,000 to the</p> <p>20 United States Government, is that right?</p> <p>21 A. That's what Paragraph 1 on Page 4</p> <p>22 says.</p> <p>23 Q. Were you aware of that as the</p> <p>24 president of the CVS Rhode Island entity</p> |

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| <p style="text-align: right;">Page 222</p> <p>1 concerning these stores?</p> <p>2 MR. DELINSKY: Object to form.</p> <p>3 A. I was not involved in preparing any of</p> <p>4 this or in the amount that was agreed upon. To</p> <p>5 the extent I knew about it, it was because of my</p> <p>6 role as an attorney as opposed to because I'm</p> <p>7 president of the store entity.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. They wouldn't have informed you as</p> <p>10 president of the store entity that a settlement</p> <p>11 had been reached?</p> <p>12 MR. DELINSKY: Object to form.</p> <p>13 A. They informed me because I'm an</p> <p>14 attorney. I'm also president of the entity. I</p> <p>15 don't know if they would have informed somebody</p> <p>16 else if somebody else was the president, but</p> <p>17 they did inform me.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Okay. And Betsy Ferguson executed</p> <p>20 this document on August 5, 2015, Page 7 of 7?</p> <p>21 A. Yes, she did. August 5th.</p> <p>22 Q. Were you aware that the DEA had</p> <p>23 conducted investigations of CVS pharmacies in</p> <p>24 California, in Nassau and Suffolk County, New</p> | <p style="text-align: right;">Page 224</p> <p>1 CVS/pharmacy retail stores and their compliance</p> <p>2 with the Controlled Substances Act, it reads</p> <p>3 "specifically investigating the recordkeeping,</p> <p>4 reporting, procedures to guard against theft and</p> <p>5 diversion, and certain dispensing practices</p> <p>6 of...CVS Pharmacy Retail Stores in the Eastern</p> <p>7 District of California." Is that right?</p> <p>8 MR. DELINSKY: Object to form.</p> <p>9 A. I was not involved in preparing this,</p> <p>10 but that appears to summarize paragraph F.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Okay. Were you aware that the DEA was</p> <p>13 concerned with thefts of controlled substances</p> <p>14 across the country?</p> <p>15 A. Others at CVS are responsible for both</p> <p>16 the investigation and for operations and</p> <p>17 compliance with what would be involved in this</p> <p>18 sort of activity. I was not.</p> <p>19 Q. If you turn to paragraph J, which is</p> <p>20 on Page 3, it reads that "CVS acknowledges that,</p> <p>21 during the period" -- do you see where I'm at at</p> <p>22 the bottom of Page 3, paragraph J?</p> <p>23 A. Yes.</p> <p>24 Q. "CVS acknowledges that, during the</p> |
| <p style="text-align: right;">Page 223</p> <p>1 York, and also in -- related to the theft of</p> <p>2 controlled substances and the failure to report</p> <p>3 those thefts to the DEA promptly?</p> <p>4 MR. DELINSKY: Object to form.</p> <p>5 A. Others at CVS are involved in all of</p> <p>6 the government investigations, so I may have</p> <p>7 heard of those matters through my role as an</p> <p>8 attorney, but other people were primarily</p> <p>9 responsible for that sort of investigation and</p> <p>10 the circumstances behind them.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Okay. This is Motley Rice 226, which</p> <p>13 is Exhibit 20 to your deposition.</p> <p>14 (Whereupon, CVS-Moffatt-20 was marked</p> <p>15 for identification.)</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. This is the settlement agreement</p> <p>18 between CVS and the DEA related to its</p> <p>19 investigation in California.</p> <p>20 If you turn to paragraph F, which is</p> <p>21 on Page 2 of the agreement, describes that the</p> <p>22 DEA Sacramento field office, and U.S. Attorney's</p> <p>23 Office for the Eastern District of California</p> <p>24 conducted an investigation with respect to</p> | <p style="text-align: right;">Page 225</p> <p>1 period from April 30, 2011 through April 30,</p> <p>2 2013, certain Eastern District of California CVS</p> <p>3 Pharmacy Retail Stores failed to fulfill certain</p> <p>4 recordkeeping obligations under the CSA in a</p> <p>5 manner fully consistent with CVS's compliance</p> <p>6 obligations."</p> <p>7 Did I read that correctly?</p> <p>8 MR. DELINSKY: Object to form.</p> <p>9 A. You did read that sentence correctly,</p> <p>10 but the next sentence starts with</p> <p>11 "Notwithstanding," so I take it that's going to</p> <p>12 say something different.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. It might.</p> <p>15 But were you aware that CVS</p> <p>16 acknowledged during this period that those</p> <p>17 recordkeeping violations existed?</p> <p>18 MR. DELINSKY: Object to form.</p> <p>19 A. It appears that we acknowledged it,</p> <p>20 but we contend that a failure to fulfill those</p> <p>21 recordkeeping obligations did not arise or did</p> <p>22 not cause the diversion of controlled</p> <p>23 substances.</p> <p>24 BY MR. ELSNER:</p> |

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1 Q. Why did CVS admit that there were
 2 recordkeeping violations, but contend that those
 3 did not arise from or cause the diversion of
 4 controlled substances?
 5 MR. DELINSKY: Object to the form of
 6 the question to the extent that would require --
 7 if you know the answer, if you possess
 8 responsive information, to the extent it would
 9 call you to divulge attorney/client privilege
 10 information or work product, and I ask that you
 11 not answer and instruct you accordingly.
 12 A. So I wasn't involved in the
 13 investigation. I don't know any particulars as
 14 to why we would do that. I could speculate, but
 15 would not be advised to do so, I'm sure.
 16 BY MR. ELSNER:
 17 Q. So the reason you read that sentence
 18 was not because you had any personal information
 19 about it?
 20 A. No, I just think it presents a fuller
 21 picture. And it also says the United States
 22 does not contend to the contrary, so the United
 23 States --
 24 Q. Did CVS --

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1 A. -- wasn't forcing the issue either.
 2 Q. Well, CVS did acknowledge that there
 3 were recordkeeping violations related to thefts
 4 of controlled substances in its California
 5 stores, is that right?
 6 MR. DELINSKY: Object to form.
 7 A. I don't think it says anything related
 8 to thefts. It says "failed to fulfill certain
 9 recordkeeping obligations." I know that that
 10 can sometimes be timing, you filed it a day
 11 late, you gave the information but because it's
 12 not filed within a certain time frame, I could
 13 see where that might be something that they
 14 would say, yet technically it's a recordkeeping
 15 violation, but it's -- you know, it wouldn't
 16 rise to the level of causing a diversion of
 17 controlled substances.
 18 BY MR. ELSNER:
 19 Q. If you look just above on Page 3 under
 20 the various bullets, it states that "The United
 21 States also contends that various EDCA CVS
 22 Pharmacy Retail Stores failed to provide
 23 effective controls and procedures to guard
 24 against theft and diversion of controlled

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1 substances."
 2 Did I read that correctly?
 3 A. That is the contention that's there,
 4 yes.
 5 Q. So it relates to thefts of controlled
 6 substances and the reporting obligations
 7 consistent with that, is that right?
 8 MR. DELINSKY: Object to form.
 9 A. Again, I'm not involved in the
 10 preparation of this, you know, some of the
 11 things above that -- what you just read, failed
 12 to record the amount or the date or to do order
 13 forms, that sort of thing, and then it says
 14 "United States also contends." So what's in
 15 paragraph J, I don't know that we're agreeing
 16 that we -- that we notified -- I kind of got
 17 lost there.
 18 Our recordkeeping obligations, our
 19 failure to fulfill recordkeeping obligations did
 20 not arise from or cause diversion of controlled
 21 substances.
 22 BY MR. ELSNER:
 23 Q. CVS agreed to pay a \$5 million fine in
 24 resolution of this investigation by the DEA, is

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1 that right?
 2 A. That's what Paragraph 1 says on
 3 Page 4.
 4 Q. And did you have a role as either
 5 president or secretary or treasurer for the --
 6 MR. DELINSKY: I apologize. I just
 7 want to object to the form of the prior
 8 question.
 9 BY MR. ELSNER:
 10 Q. Did have you a role as either
 11 president, secretary, or treasurer of any of the
 12 CVS stores in the Eastern District of California
 13 which were the subject of this settlement?
 14 MR. DELINSKY: Object to form.
 15 A. So not with respect to the store, with
 16 respect to the entities I would have a role.
 17 Depends on the time frame and what entity we're
 18 talking about, but I would have had an officer
 19 role with the store entities. I was not
 20 involved in the investigation or the settlement
 21 or anything like that.
 22 BY MR. ELSNER:
 23 Q. Were you the president of the
 24 California entity?

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1 A. What time frame are we talking about?
 2 Q. Well, I think we can talk about two
 3 time frames. The agreement was executed in June
 4 of 2017.
 5 A. So today I am president of -- we have
 6 multiple store entities in California, and I'm
 7 president of both of those. It looks like the
 8 entire time frame because it talks about on
 9 Page 2 early 2012, so that would be when I
 10 became president when my predecessor retired.
 11 Q. So as of May, 2012 through 2000 --
 12 well, through today, you've served as the
 13 president of the California entities over these
 14 pharmacies, is that right?
 15 A. That's correct.
 16 Q. Okay. And were you made aware as
 17 president of the CVS entities in California, of
 18 these CVS pharmacies, that a settlement had been
 19 reached with the DEA?
 20 MR. DELINSKY: Object to form.
 21 A. Others at CVS were responsible for
 22 operations and compliance and the people that --
 23 they were informed, and I as an attorney would
 24 be aware of it, but not -- I wasn't informed of

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1 something because I was president.
 2 BY MR. ELSNER:
 3 Q. Do you know how many thefts occurred
 4 at CVS Pharmacy stores in California of
 5 controlled substances prior to and during this
 6 period?
 7 A. Others are responsible for that sort
 8 of information. I don't have that information.
 9 Q. Do you know whether CVS had an issue
 10 with respect to thefts of opioids, hydrocodone
 11 products from its pharmacies across the country?
 12 MR. DELINSKY: Object to form.
 13 A. Others would be responsible for that
 14 sort of information. We have a loss prevention
 15 area that would be involved in that, but it's
 16 not my area.
 17 BY MR. ELSNER:
 18 Q. So you have no idea whether there's
 19 been an issue of thefts from CVS pharmacies for
 20 controlled substances?
 21 MR. DELINSKY: Object to form.
 22 A. Except as being informed as an
 23 attorney, I would not.
 24 BY MR. ELSNER:

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1 Q. Well, if a theft occurs in a CVS store
 2 and they make you aware of that, there's nothing
 3 privileged about that theft, is there?
 4 MR. DELINSKY: Let's leave the dispute
 5 over what's privileged and not between you,
 6 Mr. Elsner, and me as counsel for the witness
 7 and then the company. It's not appropriate to
 8 ask the witness to opine on what is privileged
 9 or what is not.
 10 What he's testified is that to the
 11 extent he received information on the subject it
 12 was in the context of attorney/client
 13 communication.
 14 MR. ELSNER: Just because an attorney
 15 learns a fact from a client doesn't make that
 16 fact become privileged.
 17 MR. DELINSKY: But you haven't asked
 18 him about a particular fact. You asked him
 19 about information or --
 20 BY MR. ELSNER:
 21 Q. Were you aware that there were thefts
 22 that occurred in California CVS stores at the
 23 time in which you served as the president of the
 24 entity over those stores in California?

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1 A. I was not informed of individual
 2 thefts at any California stores.
 3 Q. Were you informed of any individual
 4 thefts of opioids or other controlled substances
 5 at any CVS stores across the country?
 6 MR. DELINSKY: Object to form.
 7 A. To the extent I learned of any
 8 information about thefts, it would have been in
 9 the context of attorney/client information.
 10 BY MR. ELSNER:
 11 Q. That doesn't answer my question. I
 12 don't think my question invokes a privilege.
 13 My question is, were you informed of
 14 any thefts from CVS stores across the country
 15 while you've been working at CVS? Just yes or
 16 no.
 17 A. It's not a yes or no question.
 18 Q. Well, it's either yes, no, or I don't
 19 know.
 20 A. Others at CVS were involved in
 21 individual matters. To the extent I've received
 22 information about thefts, it would have been in
 23 the context of an attorney/client communication.
 24 MR. ELSNER: I think we should take a

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1 break and talk to the witness. I don't see how
 2 that invokes a privilege. The question is, is
 3 he aware of a theft at a CVS store. It doesn't
 4 matter whether a CVS employee told him of that.
 5 It doesn't become privileged just because there
 6 was a theft, and I also don't understand what
 7 the privilege would be.
 8 MR. DELINSKY: If there is -- what the
 9 witness is saying clearly is he may have learned
 10 information. You haven't cleared up -- you
 11 haven't asked about what specifically -- whether
 12 he specifically recalls any specific instances.
 13 MR. ELSNER: I don't have to ask that.
 14 MR. DELINSKY: Because other attorneys
 15 provide -- may have provided that information,
 16 okay, that would by definition be an
 17 attorney/client communication subject to the
 18 privilege.
 19 If you have a specific instance about
 20 what you want to inquire, were you aware of a
 21 theft on this date or that date, you can ask the
 22 question and we can see where it goes. But
 23 you're asking very broad and general questions.
 24 MR. ELSNER: I don't think it was that

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1 broad. I asked him whether he was aware of a
 2 specific instance of a theft at a CVS store.
 3 MR. DELINSKY: You can answer the
 4 question.
 5 BY MR. ELSNER:
 6 Q. Yes or no.
 7 A. I wouldn't be informed of a specific
 8 theft at a specific store.
 9 Q. Were you aware that -- strike that.
 10 Were you aware that in 2011 CVS had 12
 11 robberies in the Boston area of OxyContin?
 12 A. I don't recall being informed of that.
 13 It's not my area, so it would have been reported
 14 to other people, it wouldn't be reported to me
 15 necessarily.
 16 Q. Did you know that over the next
 17 11 months, so after the first six months, so
 18 between -- the first six months would be January
 19 through June of 2011, there had been 12
 20 robberies in the Boston area. Did you know that
 21 over the next 11 months that CVS had 96
 22 robberies of its stores in the Boston area, and
 23 that 78 of those 96 robberies targeted
 24 OxyContin?

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1 MR. DELINSKY: Object to form.
 2 A. Others at CVS would have been given
 3 that information. It wasn't my area.
 4 BY MR. ELSNER:
 5 Q. Did you know that CVS had a
 6 conversation with Purdue in a meeting with
 7 Purdue to discuss those thefts?
 8 A. Others at CVS would have participated
 9 in such a meeting. I was not involved in that.
 10 Q. So you did not -- you're not aware of
 11 that?
 12 A. I'm not aware of that.
 13 Q. Are you aware that CVS asked Purdue to
 14 indemnify them in any lawsuits related to an
 15 opioid case?
 16 MR. DELINSKY: Object to form.
 17 A. I'm not at all involved in the
 18 relationship between CVS and Purdue, so I
 19 wouldn't be the person that would be acting on
 20 that.
 21 BY MR. ELSNER:
 22 Q. Prior exhibit, the California
 23 settlement agreement lists as Attachment A CVS
 24 stores in the Eastern District of California

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1 that were covered by the settlement agreement.
 2 Do you know which of these stores experienced
 3 thefts of controlled substances?
 4 MR. DELINSKY: Object to form.
 5 A. I don't know specifically. Others at
 6 CVS would be informed of thefts at particular
 7 stores. It would not -- I would not be
 8 informed.
 9 BY MR. ELSNER:
 10 Q. Were you aware that CVS had also
 11 investigated -- sorry, that the DEA investigated
 12 CVS stores in Texas concerning thefts of
 13 controlled substances in Texas?
 14 A. I was -- I'm not involved in any of
 15 these matters, so I don't recall specifics about
 16 Texas, no.
 17 (Whereupon, CVS-Moffatt-21 was marked
 18 for identification.)
 19 BY MR. ELSNER:
 20 Q. This is Exhibit 21, which is the
 21 settlement agreement between CVS and the DEA,
 22 and this is dated December of 2015. If you look
 23 at Paragraph 7.
 24 A. Paragraph 1 is wrong. I can't help

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| <p style="text-align: right;">Page 238</p> <p>1 it.</p> <p>2 What is it? Which paragraph?</p> <p>3 Q. Paragraph 7.</p> <p>4 A. 7, okay. Okay.</p> <p>5 Q. Sorry, what was wrong about</p> <p>6 Paragraph 1?</p> <p>7 A. "CVS is incorporated in Delaware."</p> <p>8 It's incorporated in Rhode Island. So it's</p> <p>9 referring to CVS Pharmacy, Inc.</p> <p>10 Q. It's fair to say CVS's corporate</p> <p>11 structure is pretty complicated, is that right?</p> <p>12 MR. DELINSKY: Object to form.</p> <p>13 A. It's -- we have a lot of entities,</p> <p>14 yes, I'd agree with that.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. How many entities?</p> <p>17 A. Right now? Roughly a thousand.</p> <p>18 Q. And how many of those entities do you</p> <p>19 serve as a president or officer of?</p> <p>20 A. I'd have to generate a report. I'm</p> <p>21 not sure.</p> <p>22 Q. What's your best estimate?</p> <p>23 MR. DELINSKY: Objection. Asked and</p> <p>24 answered.</p> | <p style="text-align: right;">Page 240</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Did you serve as an officer of any of</p> <p>3 the CVS -- of this CVS Pharmacy in Houston,</p> <p>4 Texas in 2013 and '14?</p> <p>5 A. During the time frame, I believe so,</p> <p>6 yes.</p> <p>7 Q. Okay. Do you know the name of that</p> <p>8 entity?</p> <p>9 A. The Texas stores are actually operated</p> <p>10 by CVS Pharmacy, Inc.</p> <p>11 MR. DELINSKY: Would that change your</p> <p>12 answer as to whether or not you were an officer?</p> <p>13 A. So I am an officer of CVS Pharmacy,</p> <p>14 Inc., vice president and secretary.</p> <p>15 MR. ELSNER: Asked and answered, Eric.</p> <p>16 MR. DELINSKY: I was trying to clear</p> <p>17 it up for myself.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. There were also a listing of</p> <p>20 recordkeeping -- allegations of recordkeeping</p> <p>21 violations with respect to that theft, is that</p> <p>22 right, under 1, 2, and 3, beneath it?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And as a result of this</p> |
| <p style="text-align: right;">Page 239</p> <p>1 A. Hundreds of those, not all of them,</p> <p>2 but a large number of them.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. Did it -- let's go back to the</p> <p>5 document.</p> <p>6 Paragraph 7 of the settlement</p> <p>7 agreement. It reads "The United States contends</p> <p>8 that it has certain civil claims against CVS for</p> <p>9 engaging in the following conduct from</p> <p>10 January 1, 2013 through October 23, 2014." And</p> <p>11 it then states that "On October 15, 2014, DEA</p> <p>12 issued a Notice of Inspection to CVS Pharmacy</p> <p>13 5667," which is in Houston, Texas, "after that</p> <p>14 pharmacy had reported a theft of over 40,000</p> <p>15 dosage units of controlled substances by two</p> <p>16 former employees."</p> <p>17 Were you aware that there was a 40,000</p> <p>18 dosage unit theft of controlled substances from</p> <p>19 the CVS store in Houston, Texas?</p> <p>20 MR. DELINSKY: Object to form.</p> <p>21 A. I'm not responsible for this sort of</p> <p>22 investigation or activity, so I was not</p> <p>23 informed. Others at CVS that would be</p> <p>24 responsible for this would have been informed.</p> | <p style="text-align: right;">Page 241</p> <p>1 investigation, CVS agreed to pay a settlement in</p> <p>2 the amount of \$345,000 in Paragraph 13 on</p> <p>3 Page 4, is that right?</p> <p>4 MR. DELINSKY: Object to form.</p> <p>5 A. Paragraph 13 on Page 4 refers to a sum</p> <p>6 of \$345,000.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. Were you made aware of that as the</p> <p>9 president of CVS Texas entity?</p> <p>10 MR. DELINSKY: Object to form.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. I'm sorry, as the president of CVS</p> <p>13 Pharmacy?</p> <p>14 MR. DELINSKY: Object to form.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Were you made aware of the amount of</p> <p>17 the settlement?</p> <p>18 A. I was vice president and secretary of</p> <p>19 CVS Pharmacy. I -- others would be responsible</p> <p>20 for this settlement. To the extent I learned</p> <p>21 about it, it would have been as an attorney.</p> <p>22 Q. If I could show you the next exhibit.</p> <p>23 There was also an investigation of CVS</p> <p>24 in Nassau and Suffolk County, New York on Long</p> |

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1 Island between 2013 and 2015 concerning thefts
 2 of controlled substances and reporting
 3 violations. Were you aware of that?
 4 A. Yes, I was aware of that.
 5 Q. This is Exhibit 22.
 6 (Whereupon, CVS-Moffatt-22 was marked
 7 for identification.)
 8 BY MR. ELSNER:
 9 Q. This is Motley Rice 242.
 10 Can you tell me what it is you
 11 remember about this?
 12 A. I remember we settled it fairly
 13 recently, although the conduct, as you said, was
 14 from several years back, and I recall, I think,
 15 I signed -- yeah, I signed this one.
 16 Q. You executed this on behalf of what
 17 entity?
 18 A. CVS Pharmacy, Inc.
 19 Q. And that was the company controlling
 20 the CVS Pharmacy, the subject of this
 21 investigation pharmacies, is that right?
 22 A. Actually, no. So it appears from
 23 here, it says A, settlement, "CVS Pharmacy, Inc.
 24 is a Rhode Island corporation with its corporate

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1 headquarters in Woonsocket, Rhode Island. CVS
 2 directly or indirectly operates CVS retail
 3 pharmacies in Nassau and Suffolk Counties."
 4 So the entity that actually operates
 5 stores in New York is called CVS Albany, LLC.
 6 CVS Pharmacy, Inc. is its parent.
 7 Q. Are you an officer of CVS Albany?
 8 A. Yes.
 9 Q. President?
 10 A. I am president of CVS Albany.
 11 Q. And was that true for the time period
 12 concerning this investigation, which is between
 13 February of 2013 and January of 2015?
 14 A. Yes.
 15 Q. And the investigation here concerned
 16 the failure to promptly report a theft of a
 17 controlled substance from these stores, is that
 18 right?
 19 MR. DELINSKY: Object to form.
 20 A. Another attorney would have been
 21 involved in the whole matter. So, you know, I
 22 was brought in at the end, as I discussed
 23 earlier, you know, so, you know, I was consulted
 24 at the end when it needed to be signed. But I

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1 didn't have -- I wasn't directly involved in
 2 this, so I don't recall the particulars. Well,
 3 I didn't know the particulars.
 4 BY MR. ELSNER:
 5 Q. Well, CVS agreed to pay in settlement
 6 of this matter \$1.5 million, is that right,
 7 Page 2?
 8 A. Yeah, Page 2, Paragraph 1.
 9 Q. Is that correct?
 10 A. That is correct.
 11 Q. Okay. And you signed this settlement
 12 agreement?
 13 A. Yes.
 14 Q. Other than the settlement agreement
 15 itself, did you review any documents before you
 16 executed this agreement?
 17 A. Another attorney would have been
 18 responsible for the entire matter. I don't
 19 recall if I reviewed any documents. I had a
 20 discussion certainly with the attorney when I
 21 was asked to sign it.
 22 Q. Who was the attorney?
 23 A. I believe it was Mark Vernazza.
 24 Q. And he's employed by CVS, is that

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1 right?
 2 A. Yes, CVS Pharmacy.
 3 Q. CVS Pharmacy, Inc.
 4 Did Mark show you any documents before
 5 you executed the agreement?
 6 MR. DELINSKY: Objection. Asked and
 7 answered.
 8 A. I don't recall if he showed me
 9 anything.
 10 BY MR. ELSNER:
 11 Q. Did Mark share with you what the DEA
 12 had found concerning the thefts and the
 13 reporting from these CVS Pharmacy stores?
 14 MR. DELINSKY: Object to form. And I
 15 instruct the witness not to answer on the
 16 grounds that that would involve attorney/client
 17 privileged information.
 18 MR. ELSNER: So what I've asked him is
 19 I've asked him whether he, Mark Vernazza, shared
 20 with the witness what the DEA had found
 21 concerning thefts in the reporting violations,
 22 and you're asserting privilege over the DEA's
 23 findings and facts, is that my understanding?
 24 MR. DELINSKY: I'm asserting privilege

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1 as a result of the following circumstances.
2 Mr. Moffatt has testified that he doesn't recall
3 reviewing any documents in connection with his
4 signing the settlement agreement, so by
5 definition the only way that information could
6 have been conveyed to Mr. Moffatt would have
7 been through an attorney reflecting that
8 attorney's mental impressions upon hearing or
9 reading, depending on the facts, what the DEA
10 told him. So on that basis I am asserting
11 privilege.
12 I think the manner in which to proceed
13 here would be for you to ask Mr. Moffatt if he
14 obtained any information from the attorney that
15 was separate from or in addition to the
16 information already contained in the settlement
17 agreement so we at least can see if there's even
18 a dispute.
19 BY MR. ELSNER:
20 Q. Did you obtain any information
21 regarding the allegations here by the DEA above
22 and beyond what's written in the settlement
23 agreement?
24 A. I don't recall getting any other

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1 information.
2 Q. Did you ask for any?
3 A. I don't recall what we specifically
4 discussed.
5 Q. This was just in June of last year,
6 it's not a particularly old event, and you said
7 you did have a recollection of it. So did
8 you -- did you personally discuss any of these
9 matters with anyone at the DEA?
10 A. No. Mark or someone on Betsy's team
11 would be responsible for this sort of matter.
12 Q. Did the DEA provide CVS with any
13 document describing its findings that you're
14 aware of?
15 MR. DELINSKY: Object to form.
16 You may answer.
17 A. I wouldn't have been involved, so I
18 don't know what the DEA would have provided.
19 BY MR. ELSNER:
20 Q. Did you ask Mr. Vernazza if there were
21 any documents provided by the DEA?
22 A. I did not ask him if there were
23 documents provided, not that I recall.
24 Q. Did you -- did Mr. Vernazza, yes or

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1 no, tell you what the DEA findings were with
2 respect to these CVS stores in Long Island?
3 MR. DELINSKY: Objection. Asked and
4 answered.
5 A. In connection with signing this we had
6 discussions, but I don't recall specifically
7 what he told me about the contentions or, you
8 know, any conclusions.
9 BY MR. ELSNER:
10 Q. I'm just trying to understand, before
11 you would execute these agreements, did you just
12 rely on the lawyers at CVS who were involved in
13 this process and simply sign it, or did you do
14 any of your own independent analysis in
15 consideration before executing them?
16 MR. DELINSKY: Object to form.
17 A. I would have a discussion about the
18 attorneys involved, but I didn't do an
19 independent investigation.
20 BY MR. ELSNER:
21 Q. How many discussions?
22 A. It would depend on the case and the
23 circumstances. I don't -- we probably only had
24 one or two discussions about this matter.

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1 BY MR. ELSNER:
2 Q. How long did they last?
3 A. I don't recall.
4 Q. An hour, half a day?
5 A. I don't recall.
6 Q. Did you ever, with respect to any of
7 these investigations by the DEA, ever have a
8 meeting with anyone at the DEA concerning them?
9 A. Others at CVS have meetings with the
10 DEA all the time. I am not involved in those
11 meetings.
12 Q. Did you review any memos or documents
13 concerning those meetings with the DEA?
14 A. Not that I recall.
15 Q. Do you know whether there's a process
16 within CVS that when the DEA begins an
17 investigation that there are certain documents
18 that are generated at CVS that outline the
19 conduct by the DEA and what their investigation
20 is?
21 MR. DELINSKY: Object to form.
22 A. I'm not involved in that process.
23 There are others that are involved in the
24 process, and I'm not -- I don't know what's

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1 involved.
2 BY MR. ELSNER:
3 Q. Have you ever seen any such documents
4 related to investigation by the DEA?
5 MR. DELINSKY: Object to form.
6 A. I may have in connection with
7 discussions with other lawyers, but nothing
8 specific comes to mind.
9 MR. DELINSKY: I'd just like to put on
10 the record that Special Master Cohen has
11 addressed the subject of settlement agreements
12 on the dispensing side in Discovery Ruling No.
13 8, and he limited discovery as to the settlement
14 agreements -- to the settlement agreements and
15 the settlement agreements only, and to nothing
16 else about the settlement agreements. These
17 questions are going further than that which is
18 allowed by Discovery Ruling 8, and I object to
19 them on that ground.
20 BY MR. ELSNER:
21 Q. Are you aware that there was a DEA
22 investigation of CVS in Connecticut?
23 A. I don't -- I wouldn't have been
24 involved in that. Others would have handled it.

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1 I don't specifically recall Connecticut.
2 MR. DELINSKY: And, Mike, you'd
3 previously indicated that you hoped to finish by
4 1:00 or earlier. It's now 1:20. Could you give
5 us a sense of where you are? We've been going
6 an hour. I'm just trying to --
7 MR. ELSNER: There are three
8 additional settlements I want to address and ask
9 some wrap-up questions. So I'm happy to take a
10 break now if you want to do that, if you want to
11 take a break and go to lunch, we could do that.
12 But it took a little longer than I anticipated,
13 so...
14 MR. DELINSKY: Can you give us an
15 estimate? If it's a half hour, it's one thing.
16 If it's another hour, that's another.
17 MR. ELSNER: Why don't we go off the
18 record and discuss it.
19 THE VIDEOGRAPHER: We're going off the
20 record at 1:21 p.m.
21 (Whereupon, a recess was taken.)
22 THE VIDEOGRAPHER: We're back on the
23 record at 1:31 p.m.
24 BY MR. ELSNER:

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1 Q. Mr. Moffatt, before we broke I had
2 shared with you Exhibit 23, which is the
3 settlement agreement between CVS and the DEA
4 concerning the DEA's investigation of CVS stores
5 in Connecticut, is that right?
6 (Whereupon, CVS-Moffatt-23 was marked
7 for identification.)
8 MR. DELINSKY: Object to form.
9 A. Yeah, it appears to be stores in these
10 two cities, Southington and New Britain.
11 BY MR. ELSNER:
12 Q. And the DEA had determined that the
13 Southington store on at least 2,886 occasions
14 that CVS failed to keep paper Schedule III
15 through Schedule V prescriptions, and invoices
16 on 31 occasions with respect to the Southington
17 store and with respect to the New Britain store.
18 In Paragraph 3 the US determined that on 4,936
19 instances CVS failed to keep paper Schedule III
20 through V prescriptions in a readily retrievable
21 manner from other prescriptions in the pharmacy.
22 Is that right?
23 MR. DELINSKY: Object to form.
24 A. I wasn't involved in this

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1 investigation at all, but that appears to be a
2 summary of that paragraph.
3 BY MR. ELSNER:
4 Q. And CVS entered a settlement with the
5 DEA and agreed to pay \$600,000 in settlement, is
6 that right?
7 A. That's in Section III, Paragraph 1.
8 Again, I wasn't involved in this.
9 Q. Were you aware that CVS agreed to
10 settle these -- this investigation with the DEA
11 in that amount of \$600,000?
12 A. I have no specific recollection of
13 this matter. To the extent I learned anything
14 about it, it would have been through discussions
15 between attorneys.
16 Q. And the settlement agreement was
17 executed on behalf of Connecticut CVS Pharmacy,
18 LLC by Betsy Ferguson, the president and deputy
19 general counsel for CVS Health Corporation, is
20 that right?
21 A. That's what her signature block says,
22 yes.
23 MR. DELINSKY: I believe it says
24 senior vice president.

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1 MR. ELSNER: Senior vice president.
2 A. Yes.
3 BY MR. ELSNER:
4 Q. And did you have a role with respect
5 to Connecticut CVS Pharmacy, LLC?
6 A. Yes. I'm president of that entity.
7 Q. And were you through the period of
8 time of this investigation?
9 A. It says that it began January, 2016,
10 so yes.
11 Q. Okay. Are you currently the
12 president?
13 A. Yes.
14 Q. Were you aware that there was an
15 investigation by the DEA of CVS stores in
16 Massachusetts?
17 A. I'm not specifically involved in any
18 of these, so I don't recall that one in
19 particular.
20 Q. Okay. Here's Exhibit 24.
21 (Whereupon, CVS-Moffatt-24 was marked
22 for identification.)
23 BY MR. ELSNER:
24 Q. Which is Motley Rice 243. This was an

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1 investigation, as described in paragraph E on
2 the first page, where the government had found
3 that CVS had filled 523 forged prescriptions for
4 controlled substances.
5 Were you aware that the DEA
6 investigated CVS pharmacies in Massachusetts for
7 filling forged prescriptions?
8 A. I wasn't responsible for this sort of
9 matter. I think I was generally aware that it
10 occurred based on discussions with other
11 attorneys.
12 Q. Okay. Attached to the settlement
13 agreement is an exhibit which is described as
14 Attachment A, and it purports to be a list of
15 the forged prescriptions that were filled at CVS
16 pharmacies in Massachusetts. Were you aware of
17 that?
18 MR. DELINSKY: Object to form.
19 A. I was not involved in this matter at
20 all, so I was not -- like I said, I may have
21 been generally aware of the situation, but the
22 specifics that are in Attachment A, I was not
23 aware of.
24 BY MR. ELSNER:

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1 Q. Okay. If you look through Attachment
2 A, it includes drugs such as oxycodone,
3 hydrocodone, acetaminophen, and other opioids
4 and controlled substances, is that correct?
5 A. Those drugs appear to be listed here.
6 I'm not sure of their characterization.
7 Q. Do you know whether they're opioids or
8 not?
9 MR. DELINSKY: Object to form.
10 A. I'm aware that oxycodone and
11 hydrocodone are two opioids.
12 BY MR. ELSNER:
13 Q. Okay. And that these forged
14 prescriptions were filled in the height of the
15 opioid epidemic. And does that concern you?
16 MR. DELINSKY: Object to form.
17 A. I was not involved in this particular
18 matter. The appropriate people were involved.
19 I can tell you based on -- earlier we talked
20 about 2.5 billion prescriptions manager filled,
21 523 forgeries doesn't give me a great deal of
22 concern.
23 BY MR. ELSNER:
24 Q. Not even if they are for oxycodone and

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1 hydrocodone products, given their addictive
2 nature in the height of the opioid epidemic?
3 MR. DELINSKY: Object to form.
4 A. CVS always tries to comply with all
5 regulations, and I think we do a very good job
6 of doing that. As I said, given the volume,
7 it's unfortunate that 523 got through, but, you
8 know, given the size of our operation it doesn't
9 give me great concern.
10 BY MR. ELSNER:
11 Q. Why is it unfortunate? What did you
12 mean by that?
13 A. We like to be 100 percent, you know.
14 But it's unfortunate because we, you know, we
15 try to comply with all regulations, and if
16 forged prescriptions got through, that's not --
17 according to the DEA that's not compliant, so we
18 prefer to get it 100 percent right.
19 Q. As a result of that, CVS agreed to a
20 settlement of \$3.5 million, right?
21 A. I have to look it up.
22 Q. The terms of the agreement on Page 2.
23 A. It says 3.5 million.
24 Q. It's not sort of an oopsie, right?

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1 \$3.5 million is a significant settlement amount,
2 correct?
3 MR. DELINSKY: Object to form.
4 A. Other people handle these matters. I
5 don't know what the exposure was, what -- you
6 know, what went into the decision to settle --
7 settle the matter and the amount that it was
8 settled for. That's not my area.
9 BY MR. ELSNER:
10 Q. Do you understand that there's a lot
11 of people overdosing on these products, these
12 opioids, across the United States? Are you
13 aware of that?
14 MR. DELINSKY: Object to form.
15 A. I am aware of that situation, yes.
16 BY MR. ELSNER:
17 Q. Okay. And this is evidence of
18 diversion of these products, correct?
19 MR. DELINSKY: Object to form.
20 A. So this is evidence that -- well, it
21 says that 523 forged prescriptions, at least
22 allegedly forged prescriptions were filled at
23 our stores.
24 BY MR. ELSNER:

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1 Q. Okay. For opioid products?
2 A. It says 523 forged opioid
3 prescriptions. But again, you know, other
4 people were responsible for handling this
5 matter, and for operations of the stores.
6 Q. Did you serve a role as an officer of
7 any of the CVS pharmacies, the subject of this
8 investigation in Massachusetts?
9 MR. DELINSKY: Object to form.
10 A. So the CVS pharmacies in Massachusetts
11 are operated by CVS Pharmacy, Inc., so I'm vice
12 president, secretary, assistant general counsel
13 of CVS Pharmacy, Inc.
14 BY MR. ELSNER:
15 Q. There was also an investigation, I
16 believe, of CVS stores in Massachusetts
17 regarding the prescription monitoring program.
18 Are you aware of that?
19 A. That's not my area. I'm not sure.
20 Q. Did you know that CVS pharmacies in
21 Massachusetts didn't have access to the internet
22 so they couldn't operate the prescription
23 monitoring program?
24 MR. DELINSKY: Object to form.

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1 A. Others in CVS would be responsible for
2 what access the stores had. I have no knowledge
3 about that.
4 BY MR. ELSNER:
5 Q. Were you aware that there was a second
6 investigation by the DEA into CVS's operations
7 in Texas concerning filling prescriptions for a
8 physician that was not properly licensed?
9 Exhibit 25.
10 (Whereupon, CVS-Moffatt-25 was marked
11 for identification.)
12 A. It's Paragraph 7 you're talking about?
13 BY MR. ELSNER:
14 Q. Yes.
15 A. I see what Paragraph 7 says, yes.
16 Q. Okay. So the DEA was investigating
17 CVS pharmacies in Texas for filling
18 prescriptions for a Dr. Pedro Garcia, and it was
19 discovered that he didn't have a valid license
20 to prescribe those substances, correct?
21 MR. DELINSKY: Object to form.
22 A. It says that his Texas Department of
23 Public Safety controlled substances registration
24 was expired.

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1 BY MR. ELSNER:
2 Q. And CVS filled 153 of those
3 prescriptions?
4 A. That's what Paragraph 7 indicates.
5 Q. And as a result CVS entered into a
6 settlement with the DEA in Paragraph 13 on
7 Page 4 and agreed to pay \$1,912,500 to the DEA,
8 is that right?
9 MR. DELINSKY: Object to form.
10 A. That's what Paragraph 13 says. Again,
11 I had no involvement in the settlement or the
12 underlying matter.
13 BY MR. ELSNER:
14 Q. And it was executed by Betsy Ferguson
15 on behalf of CVS in August of 2014, is that
16 right, Page 7?
17 A. Yes. CVS, in this case CVS Pharmacy,
18 Inc., yes.
19 Q. And did you play a role with respect
20 to being an officer of the CVS entity in Texas
21 responsible for this CVS store?
22 A. So that's CVS Pharmacy, Inc., again
23 vice president, secretary, assistant general
24 counsel.

| | |
|--|---|
| <p style="text-align: right;">Page 262</p> <p>1 Q. I've done a -- I've put together -- 2 I'll show you the next exhibit, which is sort of 3 a summary of the CVS settlements that we've been 4 talking about. This is Exhibit 26. 5 (Whereupon, CVS-Moffatt-26 was marked 6 for identification.) 7 BY MR. ELSNER: 8 Q. And would you agree with me that CVS 9 had entered settlements with the DEA related to 10 its handling of controlled substances of 11 \$55 million between March of 2013 and July of 12 2018? 13 A. That appears to be the -- well, you 14 said June of 2018? 15 Q. July is the third entry. 16 A. July 24th, I got it. I'll take your 17 word for it that that's what that adds up to. 18 Q. Does that surprise you? 19 MR. DELINSKY: Object to form. 20 BY MR. ELSNER: 21 Q. The amount of the fines paid? 22 A. I know that we've had -- as I've said 23 multiple times, I'm not the person involved in 24 any of these investigations or settlements or</p> | <p style="text-align: right;">Page 264</p> <p>1 Q. Have I left any out? Has CVS, to your 2 knowledge, been a party to any other settlements 3 with the DEA concerning controlled substances 4 than the ones that I've listed here? 5 MR. DELINSKY: Object to form. 6 A. It's not my area, so I don't keep 7 track of that sort of thing. I don't -- I'm not 8 sure. 9 BY MR. ELSNER: 10 Q. Okay. Are you aware of any other 11 settlements that CVS has entered with any state 12 AG's office or any state-related fines or 13 allegations concerning either its distribution 14 or its sales of controlled substances? 15 A. It's not my area, and I don't keep 16 track of such things, so I don't -- I'm not 17 aware of anything. 18 Q. You're not aware of any? 19 A. Not that I can recall, no. 20 Q. Did you have -- did you play any role 21 with respect to the drafting of any contracts 22 related to compensation, bonuses to be paid to 23 pharmacists? 24 A. No, I had no involvement in that at</p> |
| <p style="text-align: right;">Page 263</p> <p>1 anything like that. I know that we are, you 2 know, very heavily regulated. And, you know, 3 the fact is we're one of the biggest pharmacies, 4 as we discussed at the beginning of this 5 deposition, given our volume and the scope of 6 our operations, this doesn't cause me concern. 7 Q. Not even given that these all related 8 to the dispensing of controlled substances in 9 the height of the opioid epidemic in the United 10 States? 11 MR. DELINSKY: Object to form. 12 A. No. They -- as I said, other people 13 were involved in these matters. They all have 14 different facts and circumstances. The DEA can 15 be very, you know -- they have a lot of 16 authority, and settlements in this amount don't 17 concern me. 18 BY MR. ELSNER: 19 Q. And in each instance you were an 20 officer of the entity responsible for this 21 allegation from the DEA for each one of these 22 fines, is that right? 23 A. That's correct. I was an officer of 24 some kind.</p> | <p style="text-align: right;">Page 265</p> <p>1 all. 2 Q. Were you aware that pharmacists 3 received as a component of their bonus a bonus 4 for filling prescriptions at a particular rate 5 prior to 2012? 6 A. There are other attorneys that are 7 involved with employment, and I had no 8 involvement in that, so no. 9 Q. Did you know that CVS changed its 10 policy in 2012 to exclude opioids from its bonus 11 structure for pharmacists? Did you play any 12 role with respect to that decision? 13 A. That would not be within my 14 responsibilities, so I was not involved in that 15 decision. 16 MR. ELSNER: Can we go off the record 17 for one minute? 18 A. Of course. 19 THE VIDEOGRAPHER: We're going off the 20 record at 1:49 p.m. 21 (Whereupon, a recess was taken) 22 THE VIDEOGRAPHER: We're back on the 23 record at 1:52 p.m. 24 BY MR. ELSNER:</p> |

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1 Q. Mr. Moffatt, I want to show you
2 Exhibit 27. These are some board minutes of the
3 CVS Caremark Corporation. This is MR 266 from
4 January 8th through 9, 2014.
5 (Whereupon, CVS-Moffatt-27 was marked
6 for identification.)
7 BY MR. ELSNER:
8 Q. I'm going to direct your attention to
9 Page 5 of the minutes which bears the Bates
10 number 55307.
11 A. Okay. I'm on Page 5.
12 Q. Okay. And sort of the last five lines
13 from the bottom, there's a statement here. It
14 says "a risk assessment of the Corporation's
15 incentive compensation programs."
16 Were you aware that there was a risk
17 assessment performed of CVS's incentive
18 compensation programs?
19 A. Yes, I'm aware of that. There's a
20 risk assessment conducted every year.
21 Q. Okay. Who conducts the assessment?
22 A. I believe the compensation consultant
23 is involved in that. I don't have any
24 involvement with the -- this is the chairman of

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1 the management planning and development
2 committee is making that -- this report, and I
3 don't have involvement with that committee at
4 all.
5 Q. Okay. Does this relate in any way to
6 incentive programs for pharmacy managers or
7 pharmacists?
8 A. It's an overall risk assessment of the
9 entire compensation program.
10 Q. Okay.
11 A. Whether we're incenting the right --
12 our incentive programs are doing what they aim
13 to do.
14 Q. Okay. And was there a particular risk
15 assessment performed concerning the incentive
16 compensation program related to pharmacists'
17 bonus structure for filling prescriptions
18 including opioids?
19 MR. DELINSKY: Object to form.
20 A. I don't have any knowledge of the
21 particulars of what went into the risk
22 assessment in this particular year.
23 BY MR. ELSNER:
24 Q. Okay. But the assessment included all

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1 employees, including pharmacists, is that right?
2 A. I don't know how granular it gets. I
3 think it's an overall view of the compensation
4 program, so I don't have any involvement in it,
5 so I can't really speak to it.
6 Q. The compensation consultant, is that
7 an entity outside of CVS or in CVS?
8 A. Outside of CVS.
9 Q. Who is it?
10 A. It has changed over the years.
11 Currently it's a company called Execuity. I
12 believe it was Execuity at this time, but again
13 I'm not the person involved with this.
14 Q. Do you know what it was in 2012?
15 A. I don't know.
16 MR. ELSNER: I don't think I have any
17 further questions at this time. I do think,
18 though, that there were certain questions that I
19 believe should have been answered and were not
20 on the basis of a privilege, and I'm going to
21 reserve the rest of my time in the event that we
22 decide to raise that issue with the court.
23 MR. DELINSKY: Okay.
24 MR. ELSNER: Do you have any

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1 questions?
2 MR. DELINSKY: Nothing further.
3 MR. DAWSON: No questions.
4 THE VIDEOGRAPHER: This concludes the
5 videotaped deposition of Thomas Moffatt. The
6 time is 1:56 p.m., and we are now off the
7 record.
8 (Whereupon, the deposition was
9 concluded.)
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1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
 2
 3 I, MAUREEN O'CONNOR POLLARD, RMR, CLR,
 4 and Commissioner in the State of Rhode Island
 5 and Providence Plantations, do certify that on
 6 the 15th day of January, 2019, at 8:04 o'clock,
 7 the person above-named was duly sworn to testify
 8 to the truth of their knowledge, and examined,
 9 and such examination reduced to typewriting
 10 under my direction, and is a true record of the
 11 testimony given by the witness.
 12 I further certify that I am neither
 13 attorney, related or employed by any of the
 14 parties to this action, and that I am not a
 15 relative or employee of any attorney employed by
 16 the parties hereto, or financially interested in
 17 the action.
 18 In witness whereof, I have hereunto
 19 set my hand this 17th day of January, 2019.
 20
 21 _____
 22 COMMISSIONER
 23 My Commission Expires April 30, 2020
 24

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1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition over
 4 carefully and make any necessary corrections.
 5 You should state the reason in the appropriate
 6 space on the errata sheet for any corrections
 7 that are made.
 8 After doing so, please sign the
 9 errata sheet and date it. It will be attached
 10 to your deposition.
 11 It is imperative that you return
 12 the original errata sheet to the deposing
 13 attorney within thirty (30) days of receipt of
 14 the deposition transcript by you. If you fail
 15 to do so, the deposition transcript may be
 16 deemed to be accurate and may be used in court.
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 3 -----
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1 ACKNOWLEDGMENT OF DEPONENT
 2
 3 I, _____, do
 4 Hereby certify that I have read the foregoing
 5 pages, and that the same is a correct
 6 transcription of the answers given by me to the
 7 questions therein propounded, except for the
 8 corrections or changes in form or substance, if
 9 any, noted in the attached Errata Sheet.
 10
 11 _____
 12 THOMAS S. MOFFATT DATE
 13
 14
 15 Subscribed and sworn
 16 To before me this
 17 _____ day of _____, 20____.
 18 My commission expires: _____
 19
 20 _____
 21 Notary Public
 22
 23
 24

| 1 | LAWYER'S NOTES | | |
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